(25,619)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 789.

UNION FISH COMPANY, PETITIONER,

vs.

JOHN W. ERICKSON.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MAY 14, 1917.

No. 2680

United States

Circuit Court of Appeals

For the Ninth Circuit.

UNION FISH COMPANY, a Corporation,
Appellant,

vs.

JOHN W. ERICKSON,
Appellee.

Apostles on Appeal.

Upon Appeal from the United States District Court for the Northern District of California, First Division.

Filmer Bros. Co. Print, 330 Jackson St., S. F., Cal.

UNITED STATES OF AMERICA.

District Court of the United States, Northern District of California, First Division.

CLERK'S OFFICE.

No. 15,706.

JOHN W. ERICKSON,

vs.

UNION FISH COMPANY.

Praecipe [for Apostles on Appeal].

To the Clerk of said Court:

Sir: Please *issue* prepare the Apostles on appeal in the above cause, to consist of:

All the pleadings, with the exhibits annexed thereto.

All the testimony, and other proofs adduced in the cause.

All opinions of the Court.

The final decree, and the notice of appeal; and,

The assignments of error.

H. W. HUTTON,

Proctor for Respondent.

[Endorsed]: Filed Oct. 15, 1915. W. B. Maling, Clerk. By T. L. Baldwin, Deputy Clerk. [1*]

*Page-number appearing at foot of page of original certified Record.

In the District Court of the United States, in and for the Northern District of California, First Division.

IN ADMIRALTY.

JOHN W. ERICKSON,

Libelant,

vs.

UNION FISH COMPANY,

Respondent.

(Additional Praecipe for Apostles on Appeal.)

To the Clerk of the Above-entitled Court.

In addition to the matters contained in the praecipe for the apostles on appeal in the above cause filed with you to-day:

Please insert in said apostles the matters required by Sec. (1) of the rules in Admiralty, United States Circuit Court of Appeals for the Ninth Circuit, adopted May 21, 1900.

Yours, etc.,

H. W. HUTTON,

Proctor for Respondent and Appellant.

[Endorsed]: Filed Oct. 16, 1915. W. B. Maling, Clerk. By T. L. Baldwin, Deputy Clerk. **[2]**

In the District Court of the United States, for the Northern District of California, First Division.

No. 15,706.

JOHN W. ERICKSEN,

Libelant,

vs.

UNION FISH COMPANY, a Corporation,

Respondent. **[3]**

Statement of Clerk, U. S. District Court.

PARTIES.

Libelant: JOHN W. ERICKSEN.

Respondent: UNION FISH COMPANY, a Corporation.

PROCTORS

for

Libelant: F. R. WALL, Esquire, San Francisco, California.

Respondent: H. W. HUTTON, Esquire, San Francisco, California.

PROCEEDINGS.

1914.

September 19. Filed verified Libel for breach of contract of hiring.

Issued Citation for appearance of Respondent which Citation was afterwards, on September 22d, 1914, returned and filed with the return of the U. S. Marshal endorsed thereon as follows: **[4]**

"I hereby certify and return that I served the annexed Citation on the therein-named Union Fish Company, a corporation by handing to and leaving a true and correct copy thereof with John W. Pew, the President of said Union Fish Company, personally at San Francisco, Cal., in said District, on the 21st day of September, A. D. 1914.

J. B. HOLOHAN,
U. S. Marshal.
By C. B. Delaney,
Office Deputy."

September 28. Filed Respondent's Exceptions to Libel.

October 3. This cause this day came on for hearing, upon Respondent's Exception to Libel, and after hearing duly had, the Court ordered that the matter stand submitted.

22. The Court this day rendered a written opinion, in which it was ordered that Respondent's Exceptions to Libel be overruled.

31. Filed Stipulation and Order that a Commission issue, directed to F. C. Driffield, United States Commissioner at Unga, Alaska, authorizing him to take the testi-

mony of R. Hoelke and N. J. Uldall.

November 2. Filed Answer.

9. Filed Libelant's Cross-interrogatories to be propounded to R. Hoelke and N. J. Uldall. [5]

December 12. Filed Amended Answer and Interrogatories propounded to Libelant.

17. Filed Answers of Libelant to Respondent's interrogatories.

Filed Libelant's Cross-interrogatories, to be propounded to R. Hoelke and N. J. Uldall.

23. Filed Respondent's Direct Interrogatories, to be propounded to R. Hoelke and N. J. Uldall.

24. Issued Commission, directed to F. C. Driffield, authorizing him to take the testimony of R. Hoelke and N. J. Uldall.

1915.

June 4. Filed Answers of R. Hoelke and N. J. Uldall to Direct and Cross-interrogatories, taken before U. S. Commissioner, Driffield, at Unga, Alaska.

15. Filed deposition of Sven William Wallstedt, taken before U. S. Commissioner, Krull, on behalf of Respondent.

16. This cause this day came on for hearing in the District Court of the United States, for the Northern District of California, at San Francisco, before the Honorable M. T. Dooling, Judge, and after hearing duly had, it was ordered that the matter stand submitted to Court for decision. **[6]**

September 8. The Court this day rendered a written opinion, in which it was ordered that a decree be entered in favor of Libelant for the sum of $716.05, with interest and costs.

10. Filed Final Decree.

20. Filed Notice of Appeal.

21. Filed Bond on Appeal in the aggregate sum of $1250.00, with H. W. Hutton and John W. Pew, as sureties.

23. Filed one volume of testimony taken in open Court.

October 18. Filed Assignment of Errors. **[7]**

In the United States District Court, in and for the Northern District of California, First Division.

IN ADMIRALTY.—No. 15,706.

JOHN W. ERICKSEN,

Libelant,

vs.

UNION FISH COMPANY, a Corporation,

Respondent.

Libel for Breach of Contract of Hiring.

To the Honorable M. T. DOOLING, Judge of the United States District Court, in and for the Northern District of California, First Division:

The libel of John W. Ericksen, late master of the schooner "Martha," against the Union Fish Company, a Corporation, owner of said schooner, in a cause of breach of contract of hiring, civil and maritime, alleges and articulately propounds as follows:

1. That, as libelant is informed and believes and therefore alleges the truth to be, at all of the times herein mentioned, the respondent herein, the Union Fish Company, was, ever since has been, and still is, a corporation organized and existing under and by virtue of the laws of the state of California, with its principal place of business at San Francisco, in said State; that at all of said times said respondent was, ever since has been, and still is, the owner of that certain schooner or vessel known as and called the "Martha," a vessel of the United States.

2. That in the month of May, 1914, at said San Francisco, said respondent and said libelant entered into an oral contract or agreement of hiring wherein and whereby it was mutually agreed that said libelant was to proceed to Pirate Cove, Alaska, and after arrival there to serve the respondent as master of said schooner "Martha" for a period of not less than one year and also during said time to [8] assist the manager of said respondent's salting station at said Pirate Cove when possible to do so without interfer-

ing with libelant's duties as said master of said schooner; that it was further agreed by said respondent and said libelant that said libelant was, during said time, to receive for said services wages at the rate of $55 a month and board and lodging for himself and his wife, and, at the end of not less than one year, transportation from said Pirate Cove to said San Francisco; that in accordance with said agreement, said libelant proceeded to said Pirate Cove, where he arrived on or about the 12th day of June, 1914, and thereupon entered upon the performance of his duties as aforesaid and continued to perform the same until the 18th day of July, 1914, when libelant was, by said respondent without fault on libelant's part, discharged from the services of said respondent, and libelant and his wife were thereupon by said respondent furnished with transportation from said Pirate Cove to said San Francisco; that said respondent has paid libelant the aforesaid wages at the rate of $55 a month up to and including the 15th day of July, 1914, and furnished board and lodging to said libelant and his wife up to August 5, 1914, and for no further or other time; that on said 18th day of July, and at all times since then said libelant was and has been and still is ready, willing and able to perform his part of said contract of hiring; that because of the breach of said contract of hiring as aforesaid libelant has been damaged in a sum of not less than $1,430, which sum he asks this court to award to him.

4. That all and singular the premises are true and

within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

WHEREFORE, libelant prays that process may issue against said respondent Union Fish Company, in accordance with the rules and [9] practice of this court in admiralty, and that said respondent be cited to appear and answer upon oath all and singular the matters aforesaid, and that this Court would be pleased to decree payment of the damages aforesaid, with interest and costs, and that libelant may have such other and further relief in the premises as in law and justice he may be entitled to receive.

F. R. WALL,
Proctor for Libelant.

JOHN W. ERICKSEN,
Libelant.

Subscribed and sworn to before me this 19th day of Sept., 1914.

[Seal] LYLE S. MORRIS,
Deputy Clerk U. S. District Court, Northern District of California.

[Endorsed]: Filed Sep. 19, 1914. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [10]

[Exceptions to Libel.]

In the District Court of the United States, in and for the Northern District of California, First Division.

IN ADMIRALTY—No. 15,706.

JOHN W. ERICKSON,

Libelant,

vs.

UNION FISH COMPANY, a Corporation,

Defendant.

To the Honorable M. T. DOOLING, Judge of the First Division of the Above-entitled Court:

Exceptions taken by Union Fish Company, the defendant above named to the libel of the libelant herein, for the following causes, to wit:

I.

That said libel does not state any facts upon which libelant can obtain a recovery against defendant.

II.

That the alleged agreement of employment mentioned in said libel, is void under the provisions of subdivision 1 of section 1624 of the Civil Code of the State of California, and is also void under the laws of the United States of America.

III.

That the contract of employment alleged in said libel was terminable at any time at the will of this defendant.

WHEREFORE said defendant prays to be hence dismissed.

Respectfully,

H. W. HUTTON,
Proctor for Defendant.

[Endorsed]: Filed Sep. 28, 1914. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. **[11]**

[Opinion and Order Overruling Exceptions to [Libel.]

In the District Court of the United States, in and for the Northern District of California, First Division.

IN ADMIRALITY—No. 15.706.

JOHN W. ERICKSON,

Libelant,

vs.

UNION FISH COMPANY,

Respondent.

H. W. HUTTON, Esq., Proctor for Respondent.
F. R. WALL, Esq., Proctor for Libelant.

ON EXCEPTIONS TO LIBEL.

In a suit in Admiralty involving a contract so purely maritime as the hiring of the master of a vessel the Court will not be bound by the Statutes of Fraud or of Limitations of individual States; and while it is the general rule that an owner may discharge a master at will, this rule is subject to the qualification that he may not do so, if the master has been hired for a fixed term. The exceptions to

the libel are therefore overruled.

October 22d, 1914.

M. T. DOOLING,
Judge.

[Endorsed]: Filed Oct. 22, 1914. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [12]

In the District Court of the United States, in and for the Northern District of California, First Division.

IN ADMIRALITY.

JOHN W. ERICKSON,

Libelant,

vs.

UNION FISH COMPANY,

Respondent.

Answer.

To the Honorable M. T. DOOLING, Judge of the Above-entitled Court.

The answer of Union Fish Company, respondent above named, respectfully shows as follows:

I.

It denies that libelant was hired by it to proceed to Pirate Cove, in Alaska, and there work for a period of not less than one year, and in that behalf it alleges that no time of service was ever agreed upon between libelant and respondent, excepting only that it was agreed that libelant should work for respondent only so long as it was mutually satisfactory to libelant and respondent.

It denies that libelant was hired to assist the

manager of respondent at any time or place, but it admits that libelant was hired to work partly as master of said vessel "Martha," and partly on shore as the superintendent of respondent in Alaska might direct.

It denies that it was ever agreed between libelant and respondent that at the expiration of one year from the time libelant arrived at Pirate Cove, in Alaska, or that at the end of not less than a year, respondent agreed to furnish transportation for libelant and his wife from Pirate Cove, in Alaska, to San Francisco, in the State of California, it admits, however that respondent did agree to [13] furnish transportation for libelant and his wife from said Pirate Cove to said San Francisco whenever libelant's services might terminate in Alaska.

It denies that libelant ever entered upon the performance of service for respondent in Alaska as assistant to respondent's manager at Pirate Cove, in Alaska, or at any other place, it admits however that libelant worked as second mate on one of respondent's vessels from San Francisco, to said Pirate Cove and that at the last-mentioned place he worked for respondent as master of the vessel "Martha" and partly on shore in doing such work as he was called upon to do by respondent's superintendent in Alaska. And in that behalf respondent alleges that libelant's method of doing such work was unsatisfactory in this that libelant would not work proper hours and the hours of service usually worked in businesses of like character in Alaska, he was also careless in his work, and becoming dissatisfied with

his employment it was mutually agreed between himself and respondent's superintendent in Alaska, to wit, at said Pirate Cove therein, that libelant's service should end, and thereupon libelant left said Pirate Cove and was by respondent furnished with transportation with his wife therefrom to said San Francisco, at which place it was agreed between libelant and respondent that there was a balance owing said libelant of the sum of eighty-seven and 64/100 (87.64) dollars by said respondent, which was paid to him by said respondent on the 7th day August, 1914, which libelant received and accepted in full of all demands against respondent.

Respondent denies that by reason of any act or omission of its, or by reason of any breach of contract of hiring or by reason of anything else ever existing between libelant and respondent, that libelant has been damaged in the sum of $1,430, or any *any* other sum, or has suffered any damage at all. [14]

II.

Respondent denies that the premises stated in the libel are true, except as they may be specially admitted herein, or admitted by reason of a failure to deny the same herein, and it denies that the matters stated in said libel are either *the* within the admiralty and maritime or admiralty or maritime jurisdiction of the United States of this Honorable Court.

WHEREFORE respondent prays that libelant take nothing by his action herein, but that the libel herein may be dismissed, and that it, said respondent, may have such other and further relief herein as

the Court is competent to give in the premises.

UNION FISH COMPANY,
Respondent.
By J. W. PEW,
President.

H. W. HUTTON,
Proctor for Respondent.

United States of America,
Northern District of California,—ss.

J. W. Pew, being first duly sworn, deposes and says as follows: I am an officer, to wit, the President of Union Fish Company, the respondent above named; I have read the foregoing answer and I know the contents thereof, and the same is true of my own knowledge, except as to the matters therein stated on information or belief, and as to those matters I believe it to be true.

[Seal] J. W. PEW.

Subscribed and sworn to before me this 31st day of October, 1914.

MARGUERITE S. BRUNER,
Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]:,Filed Nov. 2, 1914. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [15]

[Amended Answer and Interrogatories.]

In the District Court of the United States, in and for the Northern District of California, First Division.

IN ADMIRALITY—No. 15.706.

JOHN W. ERICKSON,

Libelant,

vs.

UNION FISH COMPANY, a Corporation,

Respondent.

To the Honorable M. T. DOOLING, Judge of the Above-entitled Court:

The amended answer of Union Fish Company, respondent above named, filed by leave of the Court first had and obtained, respectfully shows as follows:

It denies that libelant was hired by it to proceed to Pirate Cove, in Alaska, or to any other place, and there work for it, this said respondent, for a period of not less than one year, and in that behalf it alleges that no period of service was ever agreed to between libelant and respondent.

It denies that it was ever mutually agreed between libelant and this said respondent that libelant should proceed to Pirate Cove, in Alaska, or anywhere else and there serve respondent as master of the schooner "Martha," and also to assist the manager of respondent at said Pirate Cove or anywhere else; it admits that libelant was hired for a time not specified to proceed to Pirate Cove, in Alaska, and there work for respondent as master of

the schooner "Martha," and when not so engaged to work on shore at said Pirate Cove as respondent's superintendent at said Pirate Cove might direct. [16]

It denies that it was ever agreed between libelant and this respondent that libelant's wages while he was working for it the said respondent should be $55 a month and board and lodging for himself and his wife; it admits, however, that libelant's wages were agreed upon as $55 per month and board and lodging for himself only, but by permission of respondent libelant took his wife to Pirate Cove with him on one of respondent's vessels, but respondent denies that as a part of the consideration of libelant's employment by it, it ever agreed to furnish his said wife board or lodging.

It denies that it was ever agreed between libelant and respondent that at the expiration of not less than one year after libelant arrived at said Pirate Cove transportation should be furnished for libelant and his wife from Pirate Cove, in Alaska, to San Francisco, it admits, however, that it is the custom of respondent to furnish transportation for its employees and their wives and families working at said Pirate Cove to said San Francisco whenever the term of service of such employees ends.

It denies that libelant ever entered upon the performance of any duties for respondent at Pirate Cove, in Alaska, under the or any agreement mentioned in libelant's libel, or that he ever entered on any duties a part or any of which was to assist the manager of respondent at said Pirate Cove, or that

he ever entered upon any duties whatever at said Pirate Cove under and by which he was to serve respondent for a period of not less than one year at said place or under any agreement by which he was to serve said respondent for that period.

Respondent alleges that libelant was hired by it to proceed to said Pirate Cove, in Alaska, and there work for respondent partly as master of the schooner "Martha" and partly on shore; that no term of service was mentioned or agreed upon between libelant and respondent; [17] that pursuant to such agreement libelant shipped as second mate on one of libelant's vessels and proceed to said Pirate Cove, at which place he commenced to and did work for respondent partly as master of the schooner "Martha" and partly on shore; that while so working he would not work according to the customs of the business in which he was engaged, in this, that at said Pirate Cove there was at the time libelant so worked there and had been for many years prior to his doing such work a custom that men should commence work at such work as libelant did at five o'clock in the morning and continue to work as late in the evening as was necessary, the work respondent being engaged in at said place being the catching and salting of codfish, and at times late hours are necessary in such business, and it was also the custom at said place to work Sundays; that libelant was familiar with the custom when he was employed as he had worked in Alaska at the same business before; that libelant would not and did not commence to work while he was working under the employment

aforesaid at said Alaska before seven in the morning and he would not work on Sundays at all; that his method of doing work when he did do any was unsatisfactory in this, that he was slow, grumbled about the work he was asked to do, and at times would not work at all; that while at said Pirate Cove libelant demanded work of respondent at a station different to the station for which he was employed, he was careless in his work and dissatisfied with his employment, and thereupon he was discharged by libelant's superintendent at said Pirate Cove, to which discharge he assented, and an account was thereupon stated between libelant and respondent of all matters and things that existed between them, by which account a balance was shown to be due to the libelant from the respondent in amount the sum of $87.64, which sum was paid to him by this respondent on the 7th day of August, 1914, and libelant received and accepted the same in full of all claims and demands against said respondent. [18]

That at the time libelant worked for respondent at said Pirate Cove, respondent had a large number of other men at work for it at said place, consisting of fishermen, fish splitters, salters and other men engaged in work incident to a codfish station and necessary in doing work thereat.

Respondent denies that by reason of any act or omission of its, or by reason of any breach of contract of hiring libelant by it, the said respondent, or by reason of anything else ever existing between the libelant and respondent, that libelant has been damaged in the sum of $1430.00 or any other sum, or at

all, or has suffered any damage whatever.

Respondent denies that the premises stated in the libel are true, except as they may be specially admitted herein, or admitted by a failure to deny the same, and denies that the matters stated in said libel are either within the admiralty and maritime jurisdiction or the admiralty or maritime jurisdiction of the United States, or of this Honorable Court.

Wherefore respondent prays that libelant take nothing by this action, but that his libel may be dismissed, and that it may have such other and further relief as the Court is competent to give in the premises.

UNION FISH COMPANY,
Respondent.
By J. W. PEW.

H. W. HUTTON,
Proctor for Respondent.

United States of America,
Northern District of California,—ss.

J. W. Pew, being first duly sworn, deposes and says as follows:

I am an officer, to wit, the President of Union Fish Company, the respondent above named; I have read the foregoing amended answer and know the contents thereof, and the same is true of my own knowledge, except as to the matters therein stated on information or belief, [19] and as to those matters I believe it to be true.

J. W. PEW.

Subscribed and sworn to before me this 11th day of December, 1914.

[Seal] MARGUERITE S. BRUNER,
Notary Public in and for the City and County of San Francisco, State of California.

[Interrogatories Propounded to Libelant by Respondent.]

Interrogatories propounded to libelant by respondent and which he is required to answer under oath:

I.

Did you ever work in Alaska prior to the year 1914? If so state when and for who, and what you worked at.

II.

Who held the conversation with you when you were hired to work for respondent at the times mentioned in your libel?

III.

Where was such conversation held and who was present?

IV.

What was said?

V.

How many trips did you make as master of the "Martha"?

VI.

Give the dates you started on such trips, where they were to and to what places she went with you on board as master.

VII.

When you were not actually on the "Martha" as

master what work did you do at Pirate Cove? [20]

VIII.

How long did it take you to make a trip on the "Martha"?

IX.

How many men were working for the respondent at Pirate Cove while you were during 1914?

X.

Have you done any work since you returned to San Francisco, from Pirate Cove in August, 1914? If so, for whom have you worked, what work have you done, and how much have you earned?

XI.

Are you a citizen of the United States? If so, when and where did you become a citizen?

XII.

Who discharged you from respondent's service in Alaska, and what did he say when he discharged you?

XIII.

What did you say when you were discharged?

XIV.

Did you at any time ask to be transferred to another station in Alaska from Pirate Cove? If so, what station.

XV.

Are you familiar with the work necessary for filling a position in a codfish salting station? If so, state what experience you have had and when you gained such experience.

H. W. HUTTON,
Proctor for Respondent.

[Endorsed]: Filed Dec. 12, 1914. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [21]

In the District Court of the United States, in and for the Northern District of California, First Division.

IN ADMIRALTY—No. 15,706.

JOHN W. ERICKSEN,

Libelant,

vs.

UNION FISH COMPANY, a Corporation,

Respondent.

Answers to Respondent's Interrogatories.

State of California,

City and County of San Francisco,—ss.

John W. Ericksen, being first sworn, deposes and says: That the following are his answers to the interrogatories propounded to him by the respondent in the above-entitled libel, at the end of said respondent's amended answer to said libel; that said answers of this affiant are numbered to correspond to the interrogatories of said respondent and are as follows, to wit:

I.

Yes. I first worked in Alaska in 1898, fishing for salmon in the Nushak for the Alaska Packer's Association. In 1900 I went up there sailor for the McCullom Fish Co., which afterwards, as I understand it, became the Union Fish Co., and fished for them about a year off and on, codfishing, dressing and

salting our own fish on shore and kenching or loading them in bulk on the schooner "Serena." I also helped during that time to build for the McCullom Co., a salting station at Eagle Harbor. In 1901, I fished for the Greenbaum Company around Unga, doing the same work as in 1900. In 1902, I fished for, salmon for the Whalers around Ketchikan. **[22]** In 1906, I fished for salmon for the Alaska Packer's Association in Naknek, and before the fishing season began, I helped discharge the vessels and to build warehouses, repair wharves, drive spiles for traps, launch lighters and do the work usually done by fishermen in Alaska, before fishing begins.

II.

Mr. C. P. Overton, the manager of the Union Fish Co., the company that I am suing.

III.

In May, 1914, while I was in command of and running the sloop "Union" about San Francisco Bay, for the Union Fish Co., I spoke to Mr. Cox, a clerk for the company, and asked him if the company had any station in Alaska where I could be station boss. He said he would speak to Mr. Overton. A day or two after that I went to the office of the Union Fish Co., at 41 Clay Street, in San Francisco, California, as I was in the habit of doing, for I went there nearly every day for orders. I was outside of the window or grating at the office of the company and Mr. Overton was inside of the office. There was nobody else there that I could see, except that Mr. Cox was in the office when I came to the window; but he went into another office as soon as the conversation began with

me and Mr. Overton. Mr. Cox came into the office where Mr. Overton and I were once or twice afterwards during our conversation, as I remember it, to get some papers or books or something and went right out again.

IV.

All that was said, as nearly as I can remember, although I don't claim to give the exact words or just the order things were said, was this: Mr. Overton first said to me, "I hear, Cap., you want to go up to Alaska." I said, "Yes, I would like to go. I'd like to get some station to be boss in, and fish at the same time, **[23]** if you want me to, being as I want to take my wife along with me up there." Then he said to me, "We haven't got no station; but there is a job to run the schooner 'Martha' as a skipper, if you would like to take that, at Pirate Cove. I will give you more wages, or you may call it more wages, than you are getting now. You will get your board and your wife's board and $55 a month. I would like to have you go up there for at least a year, or longer if everything is all right, and when you get through with the job, of course, we will bring you back. You can help Hoelke the foreman, around the station when it doesn't interfere with your work with the 'Martha.'" I said, "What doing?" And he said, "Count fish and do whatever odd jobs there are." So I said, "I would have no expenses at all, then?" "No," he said, "everything will be furnished you, and there is a cottage up there you can live in." He then told me, "You go and consult with

your wife and let me know what she says." I said, "All right," and then went to a restaurant on the waterfront where I met my wife and we talked it over, and I saw Mr. Overton at the office later on that same day and told him, "My wife is willing to go all right and I will take the job." He then said, "All right, you get ready to go on the 'Golden State.'"

V.

Five.

VI.

I can't give the exact dates; but as nearly as I can remember she started on the first trip from Pirate Cove about June 16, 1914, for Sandburn, went there and returned to Pirate Cove, where she arrived the next day. Started from Pirate Cove on the second trip, about three days later for Porter Bay and went there and returned to Pirate Cove in three or four days. Started on the third trip three or four days after the end of the second trip and went first to Northwest Harbor and then to Siminoff, and then back to Pirate Cove, taking about five days. About three days after the third **[24]** trip started on the fourth trip which was from Pirate Cove to Sandburn, and return, and took about three days. The fifth trip began about a day after the fourth. It was also from Pirate Cove to Sandburn, and return, and took three or four days, I don't know exactly which.

VII.

All kinds of odd jobs, such as shingling roofs, packing codfish tongues, bundling up empty salt sacks, counting fish and keeping the "Martha" in condition for sea and shipshape.

XVIII.

This is answered in "VI," as near as I can answer it.

IX.

I don't know exactly; but between 30 and 40.

X.

My earnings since I arrived from Alaska have been: Schooner "C. T. Hill" longshoring, $25.00; steamer "Strathdee," Pacific Stevedoring Co., in September, $35.00; Mail Dock for "Woodside" longshoring, $11.50; on the Grace dock for the California Stevedoring Co., steamer "Santa Clara" in October, $36.00; California Stevedoring Co on Grace dock in October, $12.00; for California Stevedoring Co. on the steamer "S. F. Dollar" in November, $17.50; Grace dock in November, $21.00. Total, $158.00. During that time the house and board expenses for myself and wife have been $220.00.

XI.

Yes. In 1912, at San Francisco, California.

XII.

Hoelke, the foreman of the Union Fish Company's station at Pirate Cove, Alaska. On July 18, 1914, as nearly as I can remember, Hoelke came over to my cottage and asked my wife if I was in. She told him that I was eating supper, and he said, "After he is through **[25]** tell him to come over to my office." I went over to the office after supper and Hoelke said to me, "You pack up to-morrow and go down on the 'Golden State'; I will make up your time and you can get it and look it over to-morrow."

XIII.

I said "All right."

XIV.

No.

XV.

Yes. I have already stated where and how I gained such experience in answer to Interrogatory No. "I."

JOHN W. ERICKSEN.

Subscribed and sworn to before me this 17th day of Dec., 1914.

[Seal] CHARLES EDELMAN,

Notary Public, in and for the City and County of San Francisco, State of California.

My Commission expires April 7, 1918.

Received a copy of within answers of libelant to respondent's interrogatories this 17th day of December, 1918.

H. W. HUTTON,

Proctor for Respondent.

[Endorsed]: Filed Dec. 17, 1914. W. B. Maling, Clerk. By C. W Calbreath, Deputy Clerk. [26]

[Commission to Take Depositions of R. Hoelke et al.]

The President of the United States of America, to F. C. Driffield, United States Commissioner, Unga, Alaska, Greeting:

KNOW YE, That we, in confidence of your prudence and fidelity, have appointed you Commis-

sioner, and by these presents do give you full power and authority diligently to examine upon corporal oath or affirmation, before you to be taken, and upon the interrogatories and cross-interrogatories hereunto annexed, R. Hoelke and N. J. Uldall, as witnesses on the part of the respondent in a certain cause now pending undetermined in the District Court of the United States, in and for the Northern District of California, First Division, wherein John W. Erickson is the libelant and Union Fish Company, a corporation, is the respondent.

And we do hereby require you F. C. Driffield before whom such testimony may be taken, to reduce the same to writing, and to close it up under your hand and seal directed to the Clerk of the District Court of the United States, in and for the Northern District of California, First Division, at the city of San Francisco, State of California, as soon as may be convenient after the execution of this commission; and that you return the same, when executed, as above directed, with the title of the cause endorsed on the envelope of the commission.

WITNESS the Honorable M. T. DOOLING, Judge of the District Court of the United States of America, for the Northern District of California, this 24th day of December, in the year of our Lord one thousand nine hundred and fourteen and of our Independence the 139th.

[Seal] W. B. MALING,
Clerk.
By C. W. Calbreath,
Deputy Clerk. [27]

[Stipulation and Order for Issuance of Commission to Take Depositions of R. Hoelke et al.]

In the District Court of the United States, in and for the Northern District of California, First Division.

IN ADMIRALTY.

JOHN W. ERICKSON,

Libelant,

vs.

UNION FISH COMPANY, a Corporation,

Respondent.

It is hereby stipulated and agreed that a commission may issue out of and under the seal of the above-entitled court, directed to F. C. Driffield, a United States Commissioner, located at Unga, Alaska, authorizing him to there take the testimony in the above-entitled cause of R. Hoelke and N. J. Uldall, upon written interrogatories, the direct interrogatories on the part of respondent to be served upon proctor for libelant within three days after the making of an order by the above-entitled Court directing such commission to issue cross-interrogatories on behalf of libelant to be served within five days after the service of such direct interrogatories, and redirect interrogatories to be served within two days after the service of such cross-interrogatories if respondent shall desire redirect interrogatories; the interrogatories may be settled by the judge of said court if either party desires such settlement.

Dated October 29th, 1914.

F. R. WALL,
Proctor for Libelant.
H. W. HUTTON,
Proctor for Respondent.

Let such Commission issue.

M. T. DOOLING,
Judge.

[Endorsed]: Filed Oct. 31, 1914. W. B. Maling, Clerk. By C. W Calbreath, Deputy Clerk **[28]**

[Interrogatories to be Propounded to R. Hoelke.]

In the District Court of the United States, in and for the Northern District of California, First Division.

IN ADMIRALTY.

JOHN W. ERICKSON,

Libelant,

vs.

UNION FISH COMPANY,

Respondent.

Interrogatories to be propounded to R. Hoelke, on the taking of his deposition before F. C. Driffield, Esq., United States Commissioner at Unga, Alaska.

I.

What is your name, age, occupation, and where do you reside?

II.

Are you in the employ of the Union Fish Company? If so, how long have you been in its employ,

and at what place and in what capacity?

III.

If you state in response to the last interrogatory that you are manager or superintendent of respondent above named, please state how long you have been such manager or superintendent and if you have an assistant, and if so, how long your present assistant has held that position.

IV.

Do you know John W. Erickson, the libelant above named? If so, how long have you known him?

V.

Did libelant work at Pirate Cove, Alaska, during the months of June and July, 1914? If so, state for whom worked and under whose direction he was while doing such work. [29]

VI.

If you state in response to the last interrogatory that libelant worked at Pirate Cove, Alaska, during said months, please state what he was while working.

VII.

Did the libelant act as master of the vessel "Martha" in Alaska during the months above mentioned? If so, how much of his time was occupied on that vessel?

VIII.

Did libelant work on shore at Pirate Cove, Alaska, during the months above mentioned? If so, how much of the whole time he worked in Alaska did he work on shore, and what did he do?

IX.

What time do men start to work at Alaska, particularly in Pirate Cove, and what time has it been the custom to so start there for years past?

X.

What time did libelant start to work there?

XI.

What effect had the starting of libelant to work at the time he did on the other men at Pirate Cove?

XII.

Did you ever have any conversations with libelant about the time he started to work? If so, how many, when and what was said?

XIII.

What is the purpose of men starting to work at the time they do at Pirate Cove in Alaska?

XIV.

Did libelant obey your orders in Alaska? If you state that he did not, state in what particulars, and what, if anything, you said to him relative thereto? [30]

XV.

State the circumstances under which libelant left the service of the Union Fish Company at Alaska, what you said to him relative thereto, and what he said to you.

XVI.

Was libelant competent to perform the services he attempted to perform at Pirate Cove? If not, state in what particulars he was not competent.

XVII.

Did you have any conversations with libelant rela-

tive to the manner of doing his work? If you state that you did, state how many, the time such conversations took place and what was said.

XVIII.

Was libelant able to perform the work required of him in Alaska by the Union Fish Company? If not, state in what particulars.

XIX.

State generally anything you may know relating to John W. Erickson, the libelant, and happening while he was in the employ of the Union Fish Company, although not specifically asked for in the foregoing interrogatories.

H. W. HUTTON,
Proctor for Respondent. [31]

[Interrogatories to be Propounded to N. J. Uldall.]

In the District Court of the United States, in and for the Northern District of California, First Division.

IN ADMIRALTY.

JOHN W. ERICKSON,

Libelant,

vs.

UNION FISH COMPANY,

Respondent.

Interrogatories to be propounded to N. J. Uldall, upon the taking of his deposition before F. C. Driffield, Esq., United States Commissioner at Unga, Alaska.

I.

What is your name, age, occupation, and where do you reside?

II.

If you state in response to the last interrogatory that you are working for the Union Fish Company, state where, how long you have so worked and in what capacity.

III.

Do you know John W. Erickson, the libelant herein? If you do, state how long you have known him, and where you first became acquainted with him.

IV.

Did libelant work at Pirate Cove, Alaska, while you have been there? If so, state what he did.

V.

Did he do any work on shore there? If so, state how much of the time he worked on shore, and what he did when he worked on shore.

VI.

Was libelant able to do the work required of him at Pirate Cove? If you state he was not, state in what particulars he was not. **[32]**

VII.

What hours of labor did the men employed at Pirate Cove by the respondent work during the time libelant was there?

VIII.

What hours of labor did libelant work while he was there?

IX.

Did you ever hear any conversations between libelant and R. Hoelke on the subject of the hours of labor libelant worked at Pirate Cove? If so, please state the conversations.

X.

Do you know from any conversations you ever heard in which libelant took part, why libelant left Pirate Cove for San Francisco? If you do, please give the conversations, or any conversations, relative thereto had in libelant's presence.

XI.

What was the general manner of libelant's performance of service at Pirate Cove? Please give full particulars.

XII.

Please state *and* matters that you know relative to libelant's work at Pirate Cove, his performance thereof, and how and the circumstances under which he left there, although not particularly called for in the foregoing interrogatories.

H. W. HUTTON,
Proctor for Respondent.

Copy received this 3d day of November, 1914.

F. R. WALL,
Proctor for Libelant.

[Endorsed]: Filed Dec. 23, 1914. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [33]

In the District Court of the United States, in and for the Northern District of California, First Division.

IN ADMIRALTY—No. 15,706.

JOHN W. ERICKSEN,

Libelant,

vs.

UNION FISH COMPANY,

Respondent.

Libelant's Cross-interrogatories upon Amended Answer.

Cross-interrogatories to be propounded to R. Hoelke, on the taking of his deposition before F. C. Driffield, Esq., United States Commissioner, at Unga, Alaska.

I.

Did N. J. Uldall succeed to Ericksen's job?

II.

Was N. J. Uldall the master of or did he act as master of the vessel "Martha" at any time, and if so what time, during the season of 1914?

III.

Did anyone other than Ericksen himself tell you in what capacity Ericksen was employed? If yes, who was it told you and when.

IV.

While libelant was working on shore, did he pack codfish tongues for shipment on any vessel at any time?

V.

Did you keep any memorandum or any written

account of the time that the libelant worked on shore? If you did, give such [34] memorandum or written account to the commissioner to be marked as an exhibit and to accompany your deposition.

VI.

If you kept no written memorandum or account of the time the libelant worked on shore, state whether or not you depend solely upon your memory for your statements as to the time libelant worked on shore?

VII.

How many men, persons, including yourself and the libelant, were working at the station of the Union Fish Company at Pirate Cove during the time the libelant was at Pirate Cove during the months of June and July, 1914?

VIII.

State in detail in what capacity the men employed at Pirate Cove during June and July, 1914, were employed.

IX.

How many men employed at Pirate Cove in June and July, 1914, were engaged in fishing?

X.

Is it not a fact that the men employed at Pirate Cove in June and July, 1914, and engaged in fishing, would start to work sometime between 4 and 5 o'clock in the morning?

XI.

At what time would the men employed at Pirate Cove in June and July, 1914, and engaged in fishing, start to work?

XII.

Is it not a fact that the men above referred to as

engaged in fishing would return from fishing usually before 10 o'clock A. M.? If not, what time did they usually return? [35]

XIII.

Is it not a fact that the fishermen above referred to depended for the compensation upon the number of fish they caught?

XIV.

Did you ever give the libelant any definite order or orders when he was so start to work? If you say you did, state fully when such orders were given and just what they were.

XV.

Did the libelant ever refuse to do any work that he was definitely ordered by you to do? If you say he did, state fully and particularly what the work was and when the order was given and what the libelant said.

XVI.

If you say that libelant was not competent to perform the services he attempted to perform, state whether or not you ever told the libelant that he was not competent to perform said services, and just what the services were.

XVII.

If you say the libelant was not able to perform the work required of him in Alaska by the Union Fish Company, state whether or not you ever told the libelant that he was not able to perform said work, when and where you told him, who was present and just what each of you said.

XVIII.

Did you not tell the libelant, soon after libelant arrived at Pirate Cove, that you did not want him or that you did not need him or something to the effect that his services were not needed or wanted?

XIX.

If you answer cross-interrogatory XVIII in the negative, state whether or not you had any conversation with libelant soon [36] after he first arrived in Pirate Cove regarding his services, and what, if anything, that conversation was.

XX.

Is it not a fact that the first time you ever ordered libelant to do anything was on the 17th or 18th of July, 1914, or just a day or two before he left Pirate Cove for San Francisco?

XXI.

Did you make any report, in the form of a letter or any other writing or orally, to the Union Fish Co., or to any of its officers or agents, of the circumstances attending the discharge of the libelant?

XXII.

If you answer question numbered XXI in the affirmative, give the commissioner a copy of the writing, if any, made by you, to be attached by him to your deposition as an exhibit.

F. R. WALL,
Proctor for Libelant. [37]

In the District Court of the United States, in and for the Northern District of California, First Division.

IN ADMIRALTY—No. 15,706.

JOHN W. ERICKSEN,

Libelant,

vs.

UNION FISH COMPANY,

Respondent.

Libelant's Cross-interrogatories [to be Propounded to N. J. Uldall].

Cross-interrogatories to be propounded to N. J. Uldall, upon the taking of his deposition before F. C. Driffield, Esq., United States Commission, at Unga, Alaska.

I.

Did you go up to Pirate Cove on the same vessel with the libelant?

II.

After you arrived at Pirate Cove, did you go away from there, and if yes, to what place?

III.

If you went away from Pirate Cove, when did you go and when did you return?

IV.

How much of the time from the time that libelant arrived at Pirate Cove in June until he left in July were you at Pirate Cove?

V.

What did you do at Pirate Cove while the libelant

was there and where did your work take you? [38]

VI.

Did you work with the libelant while the libelant was at work on shore at Pirate Cove, and if you did how many days did you work with him?

VII.

If you say the libelant was not able to do the work required of him at Pirate Cove, state whether or not you ever told the libelant he was not able to do such work.

VIII.

Was it any part of your business or duty to determine whether or not the libelant was able to do his work at Pirate Cove?

IX.

Did you succeed to any of the libelant's work or duties after the libelant left Pirate Cove for San Francisco?

X.

Are you a citizen of the United States?

XI.

Were you present in the mornings when and where libelant went to work?

XII.

Did you ever hear R. Hoelke say that he had not wanted or needed the services of the libelant or anything to that effect?

F. R. WALL,
Proctor for Libelant.

[Endorsed]: Filed Dec. 17, 1914. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.

Received a copy of the within cross-interrogatories

upon amended answer to be propounded to R. Hoelke and N. J. Uldall.

H. W. HUTTON,
Proctor for Respondent. [39]

In the District Court of the United States, in and for the Northern District of California, First Division.

IN ADMIRALTY.

JOHN W. ERICKSON,

Libelant,

vs.

UNION FISH COMPANY,

Respondent.

Answers of R. Hoelke to Direct Interrogatories.

BE IT REMEMBERED that pursuant to the Commission hereunto annexed, and on the 1st day of March, 1915, in the Territory of Alaska, United States of America, before me, F. C. Driffield, a Commissioner of the United States of America in said Territory of Alaska, and the Commissioner appointed by the annexed Commission, personally appeared R. Hoelke, a witness produced on behalf of the Respondent in the above-entitled cause now pending in the above-entitled court, who, being by me first duly sworn, was then and there examined and his deposition taken in writing in answer to the interrogatories annexed to the said Commission, and he testified as follows:

I.

A. My name is R. Hoelke. My age is 51 years.

General Agent. I reside at Pirate Cove, Popoff Island, Alaska.

II.

A. I have been in the employ of the Union Fish Company for the past twenty-eight years, being employed on the various stations of said company in Alaska as a fisherman and as an agent, but have resided at Pirate Cove for the past sixteen years as General Agent, in full charge, of said company in Alaska. [40]

III.

A. I have been manager or general agent for the past sixteen years. I have never had an assistant.

IV.

A. Yes, I have known him for the past fourteen years.

V.

A. He worked at Pirate Cove, Alaska, during the month of June and up to about the 11th of July, 1914, when he sailed for San Francisco, Cal., on our schooner, the "Golden State." He worked for the Union Fish Company under my direction.

VI.

He was to be acting as captain of our small tender, the schooner "Martha," but when the vessel was not in use he was supposed to make himself generally useful about the station.

VII.

A. To the best of my knowledge the libelant only acted as master of the "Martha" for about twenty days during the months above mentioned.

VIII.

A. As nearly as I can now remember he only worked nine days ashore. It was general utility work, such as shingling, tying up empty sacks and sweeping out the different warehouses.

IX.

A. For the past twelve years the working hours at Pirate Cove and at other stations has been from 7 A. M. to 5 P. M. The men who go fishing generally go out about daybreak, but there are no set hours for this work.

X.

A. When ashore he did not start to work before 7 A. M., and many instances I had to call him after that time, as he did not turn too promptly. When he was in charge of the vessel, the "Martha," the hours were practically continuous. [41]

XI.

A. The only effect I could see on other men at Pirate Cove would be when the "Martha" was in the Cove and the libelant would not go aboard until as much as two hours late, during which time the men on the vessel would take advantage and lay around idle.

XII.

A. I had several conversations with him about turning to more promptly when ashore, also when his vessel was in the Cove that he would probably have to do tide-work. This he refused to do and also said that he would not work on Sundays.

XIII.

A. To get the best results.

XIV.

A. The only orders he did not obey was in the matter of getting to work on time. I asked him several times why he did not, and the only answer I got was that he did not come to Pirate Cove to work and would only do so when he was ready.

XV.

A. I discharged him for the reason that he refused to obey me regarding the working hours. I simply told him that I had to have someone who was more reliable and in whom I could put more trust. He never made any reply.

XVI.

A. I think he was perfectly competent to perform any duty asked of him while on shore, if he had only cared to use his best endeavors. In the matter of acting as master of the "Martha," I saw different facts which made me judge he was not competent in that position. Such as not knowing how to heave the vessel to, also when running before the wind he would keep the sheets in instead of having them slacked out. [42]

XVII.

A. The only conversation I had with him relative to the manner of doing his work ashore was in regard to the time of going to work, which occurred several times. In the manner of handling the vessel I had one occasion to tell him what to do, when I was going to give him a tow with my launch into the Cove, about 4 miles away. He was sailing along when I got up to him and told him to heave the vessel to while I passed a line on board. He did not seem

to know what to do until I told him.

XVIII.

A. I should judge he was physically able to do any work required of him, yet not competent to do so, as answered in Interrogatory XVI.

XIX.

A. One great fault with Mr. Erickson was that he would persist in wanting to take his wife with him when making a trip on the "Martha." This I refused to allow, but he would continue to argue the matter, and I think it undoubtedly created friction between him and the company. His wife was also with him wherever he was working, on the roof shingling or in the warehouses, undoubtedly detracting him from doing his work in a proper manner. Whenever I spoke to him about this he answered that he would have his wife wherever he wished and that that was his business.

R. HOELKE. [43]

United States of America,
Third Division, Territory of Alaska.

I, F. C. Driffield, United States Commissioner in and for the Territory of Alaska, and the Commissioner appointed by the annexed Commission, do hereby certify that the witness R. Hoelke, in the foregoing deposition named, was by me duly sworn to testify the truth, the whole truth, and nothing but the truth, and that said deposition was taken at Unga, in said Territory of Alaska, on the 1st day of March, 1915; that said deposition was reduced to writing, and when completed was carefully read by said witness, and after being by him corrected was

by him subscribed in my presence.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in said Territory of Alaska on this 1st day of March, 1915.

[Seal] F. C. DRIFFIELD,

United States Commissioner in and for the Territory of Alaska, and the Commissioner Appointed by the Foregoing and Annexed Commission. [44]

[Answers of R. Hoelke to Cross-interrogatories.]

In the District Court of the United States in and for the Northern District of California, First Division.

IN ADMIRALTY—No. 15,706.

JOHN W. ERICKSON,

Libelant,

vs.

UNION FISH COMPANY,

Respondent.

BE IT REMEMBERED that pursuant to the Commission hereunto annexed, and on the 1st day of March, 1915, in the Territory of Alaska, United States of America, before me, F. C. Driffield, a Commissioner of the United States of America in said Territory of Alaska, and the Commissioner appointed by the annexed Commission, personally appeared R. Hoelke, a witness produced on behalf of the respondent in the above-entitled cause now pending in the above-entitled court, who being by me first duly sworn, was then and there examined and his

deposition taken in writing in answer to the cross-interrogatories annexed to the said Commission, and he testified as follows:

I.

A. No, he did not.

II.

A. No, he did not.

III.

A. I received written instructions from the headquarters of my Company on the same vessel that Mr. Ericksen arrived in at Pirate Cove, the schooner "Golden State," which arrived on June 12th, 1914.

IV.

A. He did. [45]

V.

A. No, I did not keep any memorandum.

VI.

A. Yes, I depend entirely on my memory.

VII.

A. About 30 men.

VIII.

A. They were principally engaged in fishing. At other times they would be employed in unloading and loading our vessel, the "Golden State."

IX.

A. About 30 men.

X.

A. Yes, but entirely at their option.

XI.

A. Sometimes at daybreak, sometimes later, but it was all according to the weather.

XII.

A. It all depended as to their success in catching fish and to weather conditions. If a man filled his dory early he might return before 10 o'clock A. M., but more often would not be in until 3 o'clock P. M.

XIII.

A. Yes.

XIV.

A. When Mr. Ericksen arrived at Pirate Cove I told him to take a couple of days to get settled down, and then to report for work. I showed him what to do in odd jobs around the station, such as shingling, cleaning the warehouses, etc.

XV.

A. Yes, he refused to assist in loading and unloading the "Martha," of which he was in charge. When I instructed him to do so, he [46] answered that he would not do it for me or no other man. This was about the end of June, 1914.

XVI.

A. I told Mr. Ericksen that he was no good to me on the station, as he would never do what I instructed him to do. I gave him some work tying up salt sacks and cleaning out the warehouses. I then went away for about a day, and when I returned I noticed that the work had not been done. I asked him why it was not done. His only answer was, "I will make up for it some other day." One day when he was coming into the Cove on the "Martha," under full sail, I noticed that he was very reckless in his handling of the boat, coming very nearly going on the beach, so when he came on shore I told him he did

not seem to know how to sail her, and that I did not want the boat wrecked. On this occasion I had to send men out in a dory to help him to get to the mooring.

XVII.

A. I always thought that Mr. Ericksen was physically able to do any work asked of him, if he only cared to do so. I never spoke to him about this part of it.

XVIII.

A. No, I never did.

XIX.

A. I never had any conversation with him about his services, as to what to do or rather what he was supposed to do. If I wanted him to do anything I simply told him, and how to do it.

XX.

A. No, it is not.

XXI.

A. Yes, I wrote to the headquarters of my company in San Francisco, Cal. [47]

XXII.

A. I did not keep a copy of that letter, but undoubtedly the company must have it on file.

R. HOELKE.

United States of America,
Third Division, Territory of Alaska,—ss.

I, F. C. Driffield, United States Commissioner in and for the Territory of Alaska, and the Commissioner appointed by the annexed Commission, do hereby certify that the witness R. Hoelke in the foregoing deposition named, was by me duly sworn to

testify the truth, the whole truth, and nothing but the truth, and that said deposition was taken at Unga, in said Territory of Alaska, on the 1st day of March, 1915; that said deposition was reduced in writing, and when completed was carefully read by said witness, and after being by him corrected was by him subscribed in my presence.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in said Territory of Alaska, on this 1st day of March, 1915.

[Seal] F. C. DRIFFIELD,

United States Commissioner in and for the Territory of Alaska and the Commissioner Appointed by the Foregoing and Annexed Commission. [48]

[Answers of N. J. Uldall to Direct Interrogatories.]

In the District Court of the United States, in and for the Northern District of California, First Division.

IN ADMIRALTY—No. 15,706.

JOHN W. ERICKSON,

Libelant,

vs.

UNION FISH COMPANY,

Respondent.

BE IT REMEMBERED that pursuant to the Commission hereunto annexed, and on the 8th day of April, 1915, in the Territory of Alaska, United States of America, before me, F. C. Driffield, a Com-

missioner of the United States of America in said Territory of Alaska, and the Commissioner appointed by the annexed Commission, personally appeared N. J. Uldall, a witness produced on behalf of the respondent in the above-entitled cause now pending in the above-entitled court, who being by me first duly sworn, was then and there examined, and his deposition taken in writing in answer to the Interrogatories annexed to the said Commission, and he testified as follows:

I.

A. My name is N. J. Uldall. My age is 38 years. My occupation is that of an assistant agent of the Union Fish Company. I reside at Pirate Cove, Popoff Island, Alaska.

II.

A. I first worked at Pirate Cove, as such assistant agent, from the 12th of June, 1914, to August 12th, 1914. I then went to Pauloff Harbor, Sanak Island, and relieved the agent there until the 23d of March, 1915, when I again returned to Pirate Cove, arriving there on the 25th of March, 1915, where I have since resided as such assistant agent. [49]

III.

A. Yes, I do. I have known him since the 20th day of May, 1914, when we both came to Alaska on the same vessel, the "Golden State."

IV.

A. Yes, he worked while I was there, as master of the schooner "Martha."

V.

A. Yes, he did work at various times on shore, but to my personal knowledge I could not say that I saw him any more than a week working on shore, as I was, at times, away myself. All that I could say I saw him doing during that time was a little shingling on the office roof, tying up some bundles of salt sacks, and heading-up two barrels of codfish tongues.

VI.

A. The only answer I can honestly give, is that I had no time or chance by which I could judge of his capability.

VII.

A. The hours while doing shore-work are from 7 A. M. to 5 P. M. When the men go out fishing, they generally went at daylight, returning about noon. This was not compulsory, but practically an understood time among the fishermen.

VIII.

A. I could not say.

IX.

A. I have never heard any conversation between libelant and R. Hoelke, regarding hours of labor.

X.

A. No, I cannot remember ever hearing any such conversation.

XI.

A. I should say that the libelant was very indifferent as to how [50] he performed his work, from the fact that he once told me that he was not satisfied with the way things were at Pirate Cove, also that

he would not work on holidays or before 7 A. M. or after 5 P. M.

XII.

A. I know nothing further than as answered in the foregoing.

N. J. ULDALL.

United States of America,
Third Division, Territory of Alaska,—ss.

I, F. C. Driffield, United States Commissioner in and for the Territory of Alaska, and the Commissioner appointed by the annexed Commission, do hereby certify that the witness N. J. Uldall in the foregoing deposition named, was by me duly sworn to testify the truth, the whole truth, and nothing but the truth, and that said deposition was taken at Unga, in said Terriory of Alaska, on the 8th day of April, 1915; that said deposition was reduced to writing, and when completed was carefully read by said witness, and after being by him corrected was by him subscribed in my presence.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in said Territory of Alaska on this 8th day of April, 1915.

[Seal] F. C. DRIFFIELD,
United States Commissioner in and for the Territory of Alaska and the Commissioner Appointed by the Foregoing and Annexed Commission. [51]

[Answers of N. J. Uldall to Cross-interrogatories.]

In the District Court of the United States in and for the Northern District of California, First Division.

IN ADMIRALTY—No. 15,706.

JOHN W. ERICKSON,

Libelant,

vs.

UNION FISH COMPANY,

Respondent.

BE IT REMEMBERED that pursuant to the Commission hereunto annexed, and on the 8th day of April, 1915, in the Territory of Alaska, United States of America, before me, F. C. Driffield, a commissioner of the United States of America, in said Territory of Alaska, and the commissioner appointed by the annexed commission, personally appeared N. J. Uldall, a witness produced on behalf of the respondent in the above-entitled cause now pending in the above-entitled court, who being by me first duly sworn, was then and there examined and his deposition taken in writing in answer to the cross-interrogatories annexed to the said commission, and he testified as follows:

I.

A. I did.

II.

A. Yes; to Pauloff Harbor, Sanak Island, Alaska.

III.

A. I left Pirate Cove on or about the 14th of June, 1914, and returned on the 3d of July, 1914.

IV.

A. About eighteen days. [52]

V.

A. I did the bookkeeping, had charge of the store, and also used to tally the fish.

VI.

A. As far as I can remember, it was about two days we worked together.

VII.

A. I never said he was unable to do the work given him, nor did I ever tell him so.

VIII.

A. No, it was not.

IX.

A. No, I did not.

X.

A. No, I am not.

XI.

A. I cannot positively say that I was.

XII.

A. No, I never did.

N. J. ULDALL. [53]

United States of America,
Third Division, Territory of Alaska,—ss.

I, F. C. Driffield, United States Commissioner in and for the Territory of Alaska, and the commissioner appointed by the annexed commission, do hereby certify that the witness N. J. Uldall in the

foregoing deposition named, was by me duly sworn to testify the truth, the whole truth, and nothing but the truth, and that said deposition was taken at Unga, in said Territory of Alaska, on the 8th day of April, 1915; that said deposition was reduced to writing, and when completed was carefully read by said witness, and after being by him corrected was by him subscribed in my presence.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in said Territory of Alaska, on this 8th day of April, 1915.

[Seal] F. C. DRIFFIELD,

United States Commissioner in and for the Territory of Alaska and the Commissioner appointed by the foregoing annexed Commission.

[Endorsed]: Opened by Order Court and Filed Jun. 4, 1915. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. **[54]**

[Notice of Taking Deposition of William Wallstedt.]

In the District Court of the United States in and for the Northern District of California, First Division.

IN ADMIRALTY—No. 15,706.

JOHN W. ERICKSON,

Libelant,

vs.

UNION FISH COMPANY,

Defendant.

The libelant above named and his proctor will please take notice that the deposition of William Wallstedt will be taken *de bene esse* on behalf of the defendant, on Friday, the 9th day of October, 1914, commencing at the hour of four o'clock in the afternoon, before Francis Krull, Esquire, United States Commissioner, at his office on the third floor of the United States Post Office and Court House Building, at the end of said building nearest Market Street, in the City and County of San Francisco, State of California, at which time you are notified to be present and put such interrogatories to said witness as you may see fit.

You will further take notice, that the cause for taking the deposition of said witness, is that he is bound on a voyage to sea.

Dated October 8th, 1914.

Yours, etc.,
H. W. HUTTON,
Proctor for Defendant.

Copy received this 8th day of October, 1914.

F. R. WALL,
Proctor for Libelant. [55]

[Deposition of William Wallstedt, for Defendant.]

In the District Court of the United States in and for the Northern District of California, First Division.

IN ADMIRALTY—No. 15,706.

JOHN W. ERICKSON,

Libelant,

vs.

UNION FISH COMPANY,

Defendant.

BE IT REMEMBERED, that on Friday, the 9th day of October, 1914, pursuant to notice filed in the above-entitled cause, at my office, in the Postoffice and Courthouse Building, Room 308, in the City and County of San Francisco, State of California, personally appeared before me, Francis Krull, a United States Commissioner for the Northern District of California, to take acknowledgments of bail and affidavits, etc., William Wallstedt, a witness produced on behalf of the defendant.

F. R. Wall, Esq., appeared as attorney on behalf of the libelant, and H. W. Hutton, Esq., appeared as attorney for the defendant, and the said witness, having been by me first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid, did thereupon depose and say as is hereinafter set forth:

(It is hereby stipulated that the deposition, when written out, may be read in evidence by either party

(Deposition of Sven William Wallstedt.)

on the trial of the cause; that all questions as to the notice of the time and place of taking the same are waived, and that all objections as to the form of the questions are waived unless objected to at [56] the time of taking said deposition, and that all objections as to materiality and competency of the testimony are reserved to all parties.

It is further stipulated that the deposition of said witness William Wallstedt may be taken in shorthand by E. W. Lehner. It is further stipulated that the reading over of the testimony to the witness and the signing thereof is hereby expressly waived.) [57]

SVEN WILLIAM WALLSTEDT, called for the respondent, sworn.

Mr. HUTTON.—Q. What is your occupation, captain? A. Seafaring man; master mariner.

Q. What vessel are you master of?

A. The gasoline schooner "Golden State."

Q. How long have you been a master mariner?

A. 25 years.

Q. Whose employ are you in?

A. The Union Codfish Company.

Q. How long have you been in their employ?

A. About 30 years.

Q. Where have you been running? A. Alaska.

Q. When you say the Union Codfish Company, do you mean the Union Fish Company?

A. The Union Fish Company.

Q. Where have you been running for them while

(Deposition of Sven William Wallstedt.)

you have been sailing for them?

A. I ran up to what they call Shumagin Islands.

Q. Where is Pirate Cove?

A. That is on what they call the Popoff Island.

Q. Is that anywhere near Unga?

A. About 15 miles from Unga.

Q. Does the Union Fish Company have any stations up there?

A. In Unga, they have got one station.

Q. Have they any anywhere else?

A. Yes, they have got one on Nagai Island.

Q. And what other place?

A. They have got one station in Northwest Harbor.

Q. How about Pirate Cove?

A. Pirate Cove is on Popoff Island.

Q. Is that a station, too? A. Yes.

Q. Do they get codfish from there? A. Yes.

Q. Do you know Mr. Ericksen, the libelant in this case? A. Yes.

Q. How long have you known him?

A. Well, he was sailor with me, I don't know how many years ago; he was along with me as a seaman, 14 years ago. **[58]**

Q. Was he connected with your vessel here within the last few months?

A. Well, yes, he was second mate with me from San Francisco up to Pirate Cove; that was the last trip.

Q. When you got to Pirate Cove, where did Ericksen go? A. He went ashore at Pirate Cove.

(Deposition of Sven William Wallstedt.)

Q. Did you see him doing anything there at Pirate Cove?

A. Yes, he was running the schooner "Martha" at one time, and then he was working ashore there in the station.

Q. How long did your vessel stay in Pirate Cove when you first got there, Captain?

A. I only stayed there three days when I first got there.

Q. After that, where did you go?

A. I went over to Unga and from Unga over to Sanaak Islands, a place called Poloff Harbor, where they have got a station; then I went from there to Dura Harbor; that is on Unamak Island. From there I went back to Pirate Cove.

Q. When you got back to Pirate Cove, how long did you stay there?

A. I think about a week, if I ain't mistaken.

Q. Then where did you go?

A. Then I left Pirate Cove and went over to Ushini.

Q. Did you afterwards come to San Francisco?

A. Yes, I went from Ushini over to Northwest Harbor and then came to San Francisco.

Q. Did Ericksen come back with you? A. Yes.

Q. When you first arrived there, I think, Captain, you stated you stayed three days? A. Yes.

Q. What was Ericksen doing during that time?

Mr. WALL.—He has already answered that, I submit.

(Deposition of Sven William Wallstedt.)

Mr. HUTTON.—He can answer it again.

A. He was not doing anything to start with. He took his clothes on shore, and I guess he straightened up the house where he was [59] going to live; that is the most I seen him during the first three days he was there. Then he was helping the agent a little around there.

Q. Did you see him doing any work?

A. Yes, I saw him do it.

Q. What did you see him do?

A. I seen him up on the roof there fixing up shingles, putting shingles on the roof, and I saw him packing up codfish tongues.

Q. Anything else?

A. No, not that I can remember.

Q. When you came back again, did you see Ericksen doing anything?

A. Yes, I saw him when I first came back, I think he came back with the "Martha" when I arrived there, after my return from the stations—came back off the steamer "Martha."

Q. How many days after you got back did he come back from the "Martha"?

A. I think the day I arrived at Pirate Cove.

Q. Did he go out on the "Martha"? A. Yes.

Q. How many times did he go out on the "Martha" after you got back to Pirate Cove?

A. Three times; he was after fish two trips, codfish, over to Sand Point.

Q. Was he running the "Martha" the whole time,

(Deposition of Sven William Wallstedt.)

the week that you were there before you left?

Mr. WALL.—I object to the question as leading.

Mr. HUTTON.—That is for the Court to rule on.

A. Well, he was running her, and then he was discharging her, and he went back—he was working there discharging from the "Martha" on board my schooner, the "Golden *Gate.*"

Q. Did you see him do any other work during that week you were there after you returned to Pirate Cove except running the "Martha" or discharging fish from her?

Mr. WALL.—I object to that as leading and suggestive. A. Yes.

Mr. HUTTON.—Q. What did you see him do?

[60]

A. Well, he was doing odd jobs around the station there, cleaning up and fixing up things very little. I didn't see any other kind of work he was doing there when I was there.

Q. What time in the morning did he use to turn to, do you know?

A. He never turned to before 7 o'clock, and I guess the agent had to go in and call him out then.

Q. What is the customary time of turning to up in Pirate Cove, at that time?

A. Well, 5 o'clock, that is the time the fishermen go out; they get up before that to get breakfast, and then go out fishing.

Q. Did you ever hear any conversations between him and the agent? A. Yes, I heard a little.

(Deposition of Sven William Wallstedt.)

Q. What conversation?

A. He had a fall out there, Mr. Ericksen did.

Mr. WALL.—I object to that as immaterial, irrelevant and incompetent unless it is shown he was present when it took place.

A. Mr. Ericksen, with the agent there, he had a fall-out.

Mr. HUTTON.—Q. What was the conversation?

A. Well, Mr. Ericksen, he wanted his wife along with him on the boat when he went out.

Mr. WALL.—I object to that, and ask that it be stricken out as calling for a conclusion of the witness, and not responsive.

Mr. HUTTON.—Q. Finish your answer.

A. The agent, he would not allow it. He says he was up there for business; "we ain't out for pleasure; your wife has got a good house to live in and she will be satisfied here until you come back." They had a fall-out. He wanted to take her away and he wouldn't let him.

Mr. WALL.—I ask that the answer be stricken out because it contains conclusions of the witness that cannot be separated from what the actual conversation was. He can state what the conversation was.

[61]

Mr. HUTTON.—Q. Captain, what was the first thing you heard Ericksen say in respect to that to the agent?

A. Well, I heard him say once there he would not work more than from 7 to 5 for anybody.

Q. What was the first thing that you heard Erick-

(Deposition of Sven William Wallstedt.)

sen say to the agent about taking his wife in the boat? What did he say to the agent?

A. Well, he says he would take her.

Q. Just repeat the conversation, just exactly what Ericksen said and what the agent said.

A. "Well," he says, "I would like to have my wife along with me in the boat when I go out with her, run to those stations," and the agent told him then, he says, "You cannot take your wife along with you; there is no accommodations for her on the boat, you are bound to have one man along with you when you go, and there is only two beds, and with only two beds to sleep in, there could not be any accommodation for your wife at all in that boat."

Q. Then what did Ericksen say?

A. I don't remember what he did say. He had a little falling out there, I can't remember. I understood he said he was dissatisfied with the place, he would like to come down; that is what he told the agent.

Q. What was the name of the agent?

A. His name is Rudolph Hoelke.

Q. Did you hear Ericksen tell the agent that he was not satisfied up there? A. Yes, I did.

Q. When was that?

Mr. WALL.—I would like to have the objection made to that last question, that it is leading and suggestive.

Mr. HUTTON.—Q. When did you hear Ericksen tell Hoelke that?

(Deposition of Sven William Wallstedt.)

A. When I came back from the stations; I came back the last time to Pirate Cove, before I went down. [62]

Q. What did the agent say?

A. He says he had no objection, if he wanted to go down he could go down.

Cross-examination.

Mr. WALL.—Q. Captain, how much stock have you got in the Union Fish Company?

Mr. HUTTON.—That is objected to as immaterial.

A. Do I need to answer that?

Mr. WALL.—Yes.

Mr. HUTTON.—I don't think you have to answer that, Captain. I object to it upon the ground it is not proper cross-examination, and it is an unwarranted interference into this man's private business affairs. I will admit here that he is interested in the Union Fish Company; the extent of his interest is not material.

Mr. WALL.—Q. Do you hold any stock in the Union Fish Company?

A. Yes, I have got a few stocks, yes.

Q. Do you remember having some trouble with Ericksen about 14 years ago when you knew him as a seaman?

A. No; we had no trouble that I can remember.

Q. Were you captain of the "Ormo" about 14 years ago, up there in Alaska? A. Yes.

Q. Don't you remember having some trouble with him at that time?

(Deposition of Sven William Wallstedt.)

A. Well, there might be a few words off and on; sailors have a little growl or row, and they don't amount to anything; that is a common thing on board.

Q. Don't you remember ordering him and some others to clean some paint work at one time after you had started out at 4 o'clock in the morning?

A. No, I don't remember that.

Q. Don't you remember the seamen refusing to do it? A. No.

Q. Don't you remember starting toward him as though you were going to strike him?

A. I never did. **[63]**

Q. You never did? A. No.

Q. At no time? A. No.

Q. Do you remember having some trouble with Ericksen's wife coming down? A. Yes.

Q. On the boat? A. Yes.

Q. Do you remember the start of that trouble, your saying in her presence that she ought to be wearing breeches, or words to that effect?

A. That is what I did.

Q. That was on the trip down from Pirate Cove to San Francisco, was it not? A. Yes.

Q. Ericksen and his wife were on board coming down? A. Yes.

Q. As a result of that trouble she hit you with a coffee-pot or a mug or something of that kind?

A. No. She had a coffee-cup and she threw the coffee on me.

(Deposition of Sven William Wallstedt.)

Q. Who threw it over you?

A. Mrs. Ericksen. Can I explain a little now?

Mr. HUTTON.—Yes.

A. She commenced to run down the agent in Pirate Cove, that he was no man at all, and he was a thief, and she told me—I heard her say he was stealing in the store. So I told her, I says, "It is pretty hard for you to say that he is stealing; you can't say that if he is selling articles in the store and putting money in his pockets, you can't prove he is stealing." She says, "He is no man at all," and I says, "Well, I have been there so many years going up and down, and I have always found him to be a first-rate man; he never troubled anybody." So I told her, I says, "Well, I think you ought to wear pants and your husband *out* to wear a woman's dress." That is the time she threw the coffee over me.

Mr. WALL.—Q. Are you master of any vessel now?

A. I am master of the schooner "Golden *Gate*."

[64]

Q. Where is she now?

A. Lying down between Pier 38 and Pier 40.

Q. How long will she be there?

A. I think she will leave about Wednesday or Tuesday.

Q. This coming Wednesday or Tuesday, you think? A. Yes.

Q. Where is she going?

A. Going up to Pirate Cove.

Q. Will she go now, or wait until the spring time?

(Deposition of Sven William Wallstedt.)

A. No, she is going now, Wednesday; I am loading her up now.

Q. You mean Wednesday of next week?

A. Yes.

Q. Do you know whether she has orders to sail at that time, or not?

A. No, I do not. She will sail as soon as she gets ready,

Q. You, as master, would have orders when she was going to sail, wouldn't you?

A. Yes, I have got orders to sail when she is loaded.

Q. Where is she loading?

A. She is loading salt to-day; we are taking in salt. I guess to-morrow we will take in merchandise.

Q. Your orders are to sail as soon as she is loaded?

A. Yes.

Q. Where did your vessel lie when she was in Pirate Cove? A. Alongside of the wharf.

Q. As master of the vessel, you were aboard of her most of the time?

A. Most of the time; I would go up on the wharf there sometimes, around the station and the office.

Q. Did you generally sleep aboard your own vessel? A. Yes.

Q. Every night? A. Every night; yes.

Q. What was your routine in the morning aboard your vessel?

A. What am I doing in the morning?

Q. Yes, in port up there?

(Deposition of Sven William Wallstedt.)

A. I am around the vessel to see everything, the work that goes on; we are working taking in cargo or discharging cargo. [65]

Q. That was your routine up there, was it, to lie alongside the wharf? A. Yes.

Q. Were you taking in cargo all the time that you were up there the first three days when you first got there? A. No, I was discharging cargo.

Q. What time did you begin to discharge cargo in the morning? A. 7 o'clock in the morning.

Q. And you were on board in the morning seeing that everything was gotten ready to discharge, were you? A. Yes.

Q. How do you know what time Ericksen turned out at the time you were there?

A. I never seen him up before 7 o'clock; in fact, after 7 o'clock.

Q. That is the only way you know about it, is it?

A. Yes.

Q. What was the first conversation you heard between the agent and Ericksen? Was that after you got back to Pirate Cove after this trip around the islands? A. Yes, that was the first time.

Q. It was after that time, was it? A. Yes.

Q. What date was it, do you remember?

A. That I don't remember.

Q. How long was it before you sailed?

A. It must be about 3 or 4 days.

Q. After you had the conversation, did Ericksen make a trip with the "Martha"? A. Yes.

(Deposition of Sven William Wallstedt.)

Q. Where did this conversation take place, this first conversation? A. Right alongside the vessel.

Q. Alongside of the "Golden *Gate*"?

A. Yes, on the wharf.

Q. Were you on the wharf or on the vessel?

A. I was on the vessel.

Q. You were on your vessel? A. Yes.

Q. How far off on the wharf were they from you?

A. About 10 feet.

Q. How large a vessel is your vessel?

A. She is about 140 feet long and 32 feet beam.

[66]

Q. How much of a bulwark has she got?

A. She has got about 4 feet, a little over 4 feet.

Q. Where were you on your vessel when you heard this conversation?

A. I was on the inside, toward the wharf.

Q. What were they doing on your vessel at the time?

A. That I don't remember, what my crew was doing; we were not doing any cargo work at that time.

Q. Were you going around on your vessel from one place to the other, or did you stand still during the whole conversation, in the one place?

A. I was standing still; it didn't last over 9 or 10 minutes, the conversation.

Q. Who started this conversation, Ericksen or the agent? A. Ericksen.

Q. How did it happen; did Ericksen come up to the agent, or did the agent come up to Ericksen?

(Deposition of Sven William Wallstedt.)

A. Well, I think that the agent gave orders to Ericksen to go to Sand Point for fish.

Q. You think that the agent gave him orders; you didn't hear him give that order?

A. No, I didn't exactly. Mrs. Ericksen was down there alongside, too, at the same time, and then Mr. Ericksen, he wanted his wife along on the boat, and the agent would not allow it; he said, "There is no accommodations for a lady down there"; that it is a small cabin only with two beds, and he has to have one extra man sometimes along, too.

Q. Was it at that time that you say you heard him say he would not work longer than 7 to 5? A. No.

Q. That was some other time?

A. That was some other time.

Q. How long was that before you left, or was it when you first got up there?

A. No, it was when I came back there.

Q. How long was that before you left?

A Well, I think it must be about when I came in the second time.

Q. Where did that conversation take place? [67]

A. Well, it took place right a little way from the vessel there, up on the wharf, too.

Q. Were they up on the wharf when they were talking? A. Yes.

Q. Were you on your vessel?

A. No, I was on the wharf.

Q. Where were you on the wharf?

A. Well, I was a little ways; I don't think I was

(Deposition of Sven William Wallstedt.)

far away from them. I heard him say to the agent he would not work more than from 7 to 5 for anybody.

Q. What was said before that between them?

A. I don't remember.

Q. You did not hear anything else said except that?

A. No, I did not. They might have had some conversation between themselves.

Q. Did you hear any other conversation between them at that time at all? A. No.

Q. Nothing at all? A. No.

Q. All you heard was that Mr. Ericksen said what you say,—he would not work? A. Yes.

Q. You did not hear the agent say anything at that time before that? A. No.

Q. Nothing at all? A. No.

Q. That is all you heard Mr. Ericksen say, he would not work except from 7 to 5? A. Yes.

Q. You were standing right close to them?

A. Yes.

Q. You did not hear a single thing else? A. No.

Q. As I understood you, Captain, you said at first that you thought Ericksen said that he wanted to go back to San Francisco; is that correct? A. Yes.

Q. When did that conversation take place, when you thought you heard him say that?

A. Well, I think just when I came back. I know Mrs. Ericksen was on board there.

Q. I am talking about the conversation?

(Deposition of Sven William Wallstedt.)

A. I heard that he told that to some fisherman, too, he didn't like it there, he could not get along with Holke, and wanted to go back, he was dissatisfied. [68]

Q. That is what you heard that he told some fisherman, he could not get along with Holke, and he wanted to go back? A. Yes.

Q. That is all you know about it, that he wanted to go back; is that correct? A. Yes.

Mr. HUTTON.—You are going to sea some time next week? A. Yes.

Q. And you will be gone how long?

A. About two months.

Mr. WALL.—I won't make any *object* to that; I won't raise any point as to that. I would like an objection to go to that line of questioning; I ask that all his testimony as to any conversation about Ericksen wanting to leave be stricken out on the ground it is hearsay and as irrelevant and immaterial.

Mr. HUTTON.—Make that objection at the trial. [69]

[Commissioner's Certificate to Deposition of William Wallstedt.]

United States of America,
State and Northern District of California,
City and County of San Francisco,—ss.

I certify that on Friday, the 9th day of October, 1914, in pursuance of the notice filed in the above-entitled cause, at my office, in the Postoffice and Court House Building, Room 308, in the City and

County of San Francisco, State of California, personally appeared before me, Francis Krull, a United States Commissioner, for the Northern District of California, to take acknowledgments of bail and affidavits, etc., William Wallstedt, a witness produced on behalf of the defendant in the cause entitled in the caption hereof, and F. R. Wall, Esq., appeared as attorney on behalf of the libelant, and H. W. Hutton, Esq., appeared as attorney for the defendant, and that the said witness being by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in said cause, deposed and said as appears by his deposition hereto annexed.

I further certify that the said deposition was then and there taken down in shorthand notes by E. W. Lehner, and thereafter reduced to typewriting; and I further certify that by stipulation of the attorneys the reading over of the deposition to the witness and the signing thereof was expressly waived.

And I do further certify that I have retained the said deposition in my possession for the purpose of delivering the same with my own hand to the Clerk of the United States District Court for the Northern District of California.

And I do further certify that I am not of counsel, nor attorney for either of the parties in the said deposition and captoin named, nor in any way interested in the event of the cause named in the said caption. [70]

IN WITNESS WHEREOF, I have hereunto set

my hand at my office aforesaid this 22d day of December, 1914.

[Seal] FRANCIS KRULL,
United States Commissioner, Northern District of California, at San Francisco.

[Endorsed]: Filed Jun. 15, 1915. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. **[71]**

In the District Court of the United States for the Northern District of California, First Division.

IN ADMIRALTY—No. 15,706.

Before Hon. MAURICE T. DOOLING, Presiding.

JOHN W. ERICKSON,

Libelant,

vs.

UNION FISH COMPANY, a Corporation,

Defendant.

(Testimony Taken in Open Court.)

Counsel Appearing:

For Libelant: F. R. WALL, Esq.

For Respondent: H. W. HUTTON, Esq.

Wednesday, June 16, 1915.

[Statement of the Case by Mr. Wall.]

Mr. WALL.—If your Honor please, this is a libel for breach of contract. The libel alleges that in the month of May of last year in San Francisco the respondent Union Fish Company and the libelant, John W. Erickson, entered into an oral contract of hiring wherein it was agreed that libelant was to proceed to Pirate *Voce,* Alaska, and after arrival there to serve the respondent as master of the schooner

"Martha" for a period of not less than one year, and also during that time to assist the manager of the respondent's salting station at Pirate Cove when possible to do so without interfering with libelant's duties as master of the schooner; that it was further agreed that libelant was during that time to receive for his services wages at the rate of $55 a month and board and lodging for himself and his wife and at the end of not less than one year transportation from Pirate [72] Cove back to San Francisco. That in accordance with the agreement libelant proceeded to Pirate Cove, where he arrived about the 12th day of June, and entered upon the performance of his duties aforesaid and continued to perform them until the 18th day of July, when he was without fault on his part discharged from the service of respondent and he and his wife were thereupon by said respondent furnished with transportation from Pirate Cove to San Francisco, and that respondent has paid the libelant wages at the rate of $55 a month up to and including the 15th day of July, 1914, and furnished board and lodging to libelant and his wife up to August 5, 1914, and for no other or further time. That at all times since then the libelant has been ready, able and willing to perform his part of the contract of hiring. That he has suffered damages in the sum of $1,430; that the case is within the jurisdiction of this Court.

The answer denies that the libelant was hired by it to proceed to Pirate Cove or any other place and there work for it for a period of not less than one year, and in that behalf it alleges that no period of

service was ever agreed upon between libelant and respondent.

It denies that it was ever agreed that libelant should proceed to Pirate Cove and there serve respondent as master of the "Martha" and to assist the manager.

It admits that libelant was hired for a time not specified to proceed to Pirate Cove, Alaska, and there work for respondent as master of the schooner "Martha," but was not engaged to work under the superintendence of the manager.

It denies that it was ever agreed between libelant and respondent that libelant's wages while he was working for it should be $55 a month and board and lodging for himself and his wife; it admits that libelant's wages were agreed upon at $55 a month and [73] board and lodging for himself only, but by permission of respondent libelant took his wife to Pirate Cove with him on one of respondent's vessels, but respondent denies that as a part of the consideration of libelant's employment by it, it ever agreed to furnish his said wife board or lodging. It denies that it ever agreed that at the expiration of not less than one year transportation should be furnished for libelant and his wife; it admits, however, that it is the custom to furnish transportation for its employees and their wives and families working at said Pirate Cove to said San Francisco whenever the term of service of such employee ends.

It denies that libelant ever entered upon the performance of any duties for respondent under the or any agreement mentioned in libelant's libel, or that

he ever entered upon any duties a part or any of which was to assist the manager of respondent at said Pirate Cove, or that he ever entered upon any duties whatever at said Pirate Cove under and by which he was to serve respondent for a period of not less than one year at said place or under any agreement by which he was to serve said respondent for that period.

Respondent alleges that libelant was hired by it to proceed to said Pirate Cove and there work for it partly as master of the schooner "Martha" and partly on shore; that no term of service was agreed upon between libelant and respondent; that pursuant to such agreement libelant shipped as second mate on one of respondent's vessels and proceeded to said Pirate Cove, at which place he commenced to and did work for respondent partly as master of the schooner "Martha" and partly on shore; that while so working he would not work according to the customs of the business in which he was engaged, in this, that at said Pirate Cove there was at the time libelant so worked there and [74] had been for many years prior to his doing such work a custom that men should commence to work at such work as libelant did at 5 o'clock in the morning and continue to work as late in the evening as was necessary, the work respondent being engaged in at said place being the catching and salting of codfish, and at times late hours are necessary in such business, and it was also the custom at said place to work Sundays; that libelant was familiar with the custom when he was employed, as he had worked in Alaska

at the same business before; that libelant would not and did not commence to work while he was working under the employment aforesaid at said Alaska before 7 in the morning, and he would not work on Sundays at all; that his method of doing work when he did do any was unsatisfactory in this, that he was slow, grumbled about the work he was asked to do, and at times would not work at all. That while at said Pirate Cove libelant demanded work of respondent at a station different to the station for which he was employed; that he was careless in his work and dissatisfied with his employment, and that thereupon he was discharged by libelant's superintendent at said Pirate Cove, to which discharge he assented, and an account was thereupon stated between libelant and respondent of all matters and things that existed between them by which account a balance was shown to be due to the libelant from the respondent in amount the sum of $87.64, which sum was paid to him by this respondent on the 7th day of August, 1914, and libelant received and accepted the same in full of all claims and demands against said respondent.

That at the time libelant worked for respondent at said Pirate Cove, respondent had a large number of men at work for it at said place, consisting of fishermen, fish splitters, salters and other men engaged in work incident to a codfish station and [75] necessary in doing the work thereat.

Respondent denies that by reason of any act or omission of it, or by reason of any breach of contract of hiring of libelant by it, or by reason of any-

thing else ever existing between the libelant and respondent, the libelant has been damaged in the sum of $1,430, or any other sum or has suffered any damage whatever.

Respondent denies that the premises stated in the libel are true, except as they may be specially admitted herein, or admitted by a failure to deny the same, and denies that the matters stated in said libel are either within the admiralty and maritime jurisdiction or the admiralty or maritime jurisdiction of the United States or of this Honorable Court.

[Testimony of John W. Erickson, the Libelant.]

JOHN W. ERICKSON, the libelant, sworn.

Mr. WALL.—Q. You are the libelant or the person who is suing for damages for breach of this contract of hiring, are you not? A. Yes, sir.

Q. What is your usual business or occupation,—what do you follow for a livelihood? A. The sea.

Q. You were hired by the Union Fish Company for certain services in Alaska last year, were you not?

A. Yes, sir.

Q. State with whom you held the conversation when you were hired to work for the Union Fish Company at the times mentioned in your libel?

A. Mr. Overton. I first seen Mr. Cox.

Q. Who was Mr. Overton?

A. Mr. Overton was the managing owner of the Union Fish Company.

Mr. HUTTON.—I move to strike that out, if your Honor please, on the ground that he cannot know who Mr. Overton was or what he was. [76]

The COURT.—He might know; motion denied.

(Testimony of John W. Erickson.)

Mr. WALL.—Q. In whose service were you at the time? A. The Union Fish Company.

Q. What had you been doing?

A. I was running the sloop "Union."

Q. About the Bay of San Francisco?

A. Yes, sir.

Q. How long had you been working for the Union Fish Company?

A. From about the 25th of January, until May 17th.

Q. State how you happened to take up with the Union Fish Company getting a job in Alaska?

A. I was working on the sloop "Union," and I had to live across the bay at Belvedere Island, and my wife had to live over here because there was no place here to rent a house; I only received $60 a month and it took pretty near all of the $60 to board my wife on this side. I was up in Alaska before working for the McCullom Company at one time and so I asked Mr. Cox—

Q. Who is Mr. Cox?

A. Mr. Cox is agent or clerk—

Mr. HUTTON.—I object to what he said to Mr. Cox until it is shown who Mr. Cox was.

The COURT.—He is trying to show that now.

A. (Continuing.) Mr. Cox was the clerk for the Union Fish Company.

Mr. WALL.—Q. What did you ask him?

A. I asked him if he thought there was any jobs in Alaska such as taking care of a station, something like that—

(Testimony of John W. Erickson.)

Mr. HUTTON.—We still object to this as hearsay, on the ground that there is nothing to show that Mr. Cox had any authority to bind the respondent.

Mr. WALL.—This is just preliminary.

A. (Continuing.) I asked him and he said he would see Mr. Overton. The next day when I came with my cargo from Union City, I always had a list or a letter to take to the Union Fish Company, and I took that up and I seen Mr. Overton. [77]

Q. Where did you see him? A. In the office.

Q. In the office of what?

A. In the office of the Union Fish Company. Mr. Overton said, "I hear, Cap., you want to go to Alaska." I said, "Yes, if there is a show I would like to go up there," and then he offered me to go up as master of the schooner "Martha" and assist Hoelke, the superintendent of the Pirate Cove, when I was not busy in the "Martha." Then he told me he would give me $55 a month and everything found; and I says, "A house for my wife and myself?" and he said, "Yes; that's all right." I says, "Well, I could not promise you just yet, but I will go over and see my wife and see if she is willing to go." I met my wife over at Washington and East streets and we went in to a restaurant to have our dinner and I told my wife and she said, "All right, I will go."

Mr. HUTTON.—That is all hearsay, your Honor.

The COURT.—That is hearsay; yes.

Mr. WALL.—Q. When you had your conversation with Mr. Overton, state whether or not anything was

(Testimony of John W. Erickson.)

said as to how long a time you were to go for.

Mr. HUTTON.—I object to that upon the ground that it is leading.

The COURT.—The objection is overruled.

A. Mr. Overton told me that he didn't feel like sending a man up only for a year; he said, "We like to see a man go up there and stay for 3 or 4 or 5 years, or 10 years"; he said, "Of course, we wouldn't send up anybody for less than a year under no circumstances, as that is the old custom, it has been since the Union Fish Company or the McCullom Fish Company started in Alaska," and I said, "If I can get along, I don't want to come down in a year; I would like to stay up there and make a little money."

Q. What, if anything, was said about the expenses of your wife while up there?

Mr, HUTTON.—The same objection, your Honor, that it is leading. [78]

The COURT.—The objection is overruled.

A. My wife and I are supposed to be found, everything, that is to say, except clothing; but house rent and my board we were entitled to up there, either to eat in the company's house or to get the stores from the store and cook for ourselves.

Q. What services were you to perform while you were up there?

A. I was supposed to run the schooner "Martha" when they needed her to take fish from the other stations, from the stations around there, to Pirate Cove.

Q. When did you get there?

The COURT.—Q. And what else?

(Testimony of John W. Erickson.)

A. And to assist Mr. Hoelke in counting fish and helping him in general around the station.

Mr. WALL.—Q. When did you get there?

A. We got there about the 20th of June.

Q. Last year? A. Yes, sir.

Q. After you got there did you make any trips with the "Martha"? A. Yes, I made five trips.

Q. About what time did you start on your first trip from Pirate Cove, about how long after you got there?

A. About 4 or 5 days, or something like that.

Q. Where did you go?

A. To a place called Sanburn.

Q. When did you return?

A. I returned the following day.

Q. And how long after that before you started on your second trip?

A. About three days, about two or three days.

Q. Where was that?

A. That was to Porter's Bay, on the mainland.

Q. How long did that take?

A. That took me three days, 3 or 4 days, I would not say for sure.

Q. How long after that was it before you started on the third trip? A. A couple of days.

Q. Where was that third trip to?

A. That was down to the [79] Northwest Harbor and Siminoff Islands.

Q. How long did that take?

A. It took me, I think, five days.

(Testimony of John W. Erickson.)

Q. And how long was it after that you started on the fourth trip?

A. Only a couple of days and I started for Sanburn again and made a trip after fish, and then in a couple of days again I went over for another load of fish.

Q. How long after the fourth trip before you started on the fifth trip?

A. A couple of days—I think only one day because I was supposed to leave there before the 4th of July.

Q. Where was that to? A. Sanburn.

Q. How long did that take you? A. Two days.

Q. How long during the time you were up there were you on shore at Pirate Cove?

A. I could not say for sure, but practically 7 or 8 days.

Q. While you were at Pirate Cove, what work did you do on shore?

A. I done what I was asked to do, bundling up sacks, and I shingled some roofs and I packed some tongues; one day Mr. Hoelke was away and I counted the fish. Otherwise he told me he did not trust me to count fish.

Q. State just exactly what happened when you severed your relations with the Union Fish Company up there, and what was said to you and by whom.

A. I think I just came from Sanburn; I could not say whether I went ashore that day or whether I came from Sanburn that day, but in the evening, about 5 or half-past 5—about half-past 5, I was eating my supper and Mr. Hoelke came over to the

(Testimony of John W. Erickson.)

house, and my wife was standing out in the kitchen, and he said, "Is Erickson here?" and she said, "Yes; he is having his supper." He says, "When he is through tell him to come over to the office." I quit eating right there and I went right over to the office and when I got over to the office Mr. Hoelke told me, "You better pack your stuff, go down in the 'Golden State' to-morrow." And so I says, [80] "All right." That is all I said.

Q. State whether or not at any time while you were there you ever requested to be discharged.

A. No, I never requested to be discharged.

Q. When you came back, when did you leave Pirate Cove? A. I can't remember the date.

Q. About what time?

A. I think it must have been somewhere around the 18th or 20th.

Q. Of what month? A. Of July.

Q. On the "Golden State"? A. Yes, sir.

Q. What time did you get back to San Francisco?

A. On the 5th of August.

Q. And you and your wife were furnished with board and lodging on the "Golden State" until you arrived here? A. yes, sir.

Q. And also with board and lodging while you were at Pirate Cove? A. Yes, sir.

Q. When you got back here what did you do in regard to getting the wages due you up to that time?

A. I went down to the office and I seen Mr. Pugh. I told Mr. Pugh that—

The COURT.—Q. Who is Mr. Pugh?

(Testimony of John W. Erickson.)

A. He is the president of the Union Fish Company.

Mr. WALL.—Q. This gentleman here (pointing)?

A. Yes, sir. I seen Mr. Pugh and I said, "I have been to quite an expense in moving my stuff down to the "Golden State" and storing some of it and I had to give away some of it because I could not take it along with me, and also in moving my stuff coming back again and going ashore from the 'Golden State,' and I had to take a hotel when I first came here, and stay there about eight days, I think," or something like that, and I asked him if he would not pay me $50 more than my wages to reimburse me for the expense I was under, and he said he couldn't do nothing like that; he said, [81] "You didn't make your contract with me; you made it with Mr. Overton; you may wait, if you like, until Mr. Overton gets back from Europe and see him, but," he says, "we couldn't do nothing like that because we have been under too much expense ourselves; you know it costs us money to take you up there, too."

Q. What did you say in answer to that, if you said anything? A. I didn't say nothing.

Q. When he said they had been to considerable expense themselves, what did you say?

A. I said it was not my fault. I went up there to stay and do my work and I didn't suit and he sent me down.

Q. What expense were you put to when you got down here about moving your things?

(Testimony of John W. Erickson.)

Mr. HUTTON.—I don't think that would be an element of damage, your Honor, assuming he is entitled to any, which we deny.

Mr. WALL.—I will withdraw that.

Q. What expense were you put to in leaving San Francisco to go up there?

Mr. HUTTON.—I don't think that would be an element of damage, if your Honor please, and I object to it upon that ground, that is, assuming that he is entitled to it; we deny that he is entitled to any.

The COURT.—It seems to me the measure of his damages would be what he would have received if he had continued the employment, if he is entitled to damages at all.

Mr. WALL.—Q. After you got back to San Francisco what expenses were you put to?

Mr. HUTTON.—I make the same objection to that, if your Honor please. It is immaterial, irrelevant and incompetent.

Mr. WALL.—His living expenses, his board and lodging; that was a part of his contract. [82]

Mr. HUTTON.—But it is too general.

Mr. WALL.—Q. What expenses have you been under for board and lodging since you arrived in San Francisco, and up to the 12th day of June of this year?

Mr. HUTTON.—I submit that that would be immaterial. If this man was entitled to anything at all for his board and lodging, it would be what it cost in Alaska, and not here.

(Testimony of John W. Erickson.)

Mr. WALL.—That would be against you, then, Mr. Hutton.

The COURT.—The objection is overruled.

Mr. WALL.—Q. What expenses have you been to for your board and lodging since you arrived in San Francisco and up to the 12th day of June of this year?

A. It is what it cost me to live and for rent, $55 a month, that is what it has cost, because we kept track of the first couple of months of what it would cost us; I could not live on no less than that, $55 for board and room and gas and milk, and so forth.

The COURT.—Q. That is for yourself and wife?

A. Yes, sir.

Mr. WALL.—Q. When you were paid down here, what sum of money were you paid altogether?

A. The first money I took was $25; that was the first drawing I made. I would not take all because I had asked for those $50 to reimburse my expenses and I thought I would wait and see if I could not get that, and so I got $25 first out of $87.64, I think, that was due me; a couple of days afterwards I went up and saw Mr. Wall; I asked him if it would interfere with me if I was suing for my expenses if I drew the rest of my money that was due me, and Mr. Wall said "No, you go down and draw your money."

Q. What was the $87.64 due you for?

A. For the time I had shipped first as second mate; of course, it was understood I was going up as second mate, so I would lose no time. **[83]**

(Testimony of John W. Erickson.)

Q. That is, you went second mate on the "Golden State" going up there? A. Yes, sir.

Q. And part of the $87.64, part of it was for wages as second mate on the "Golden State," was it?

A. Yes, sir.

Cross-examination.

Mr. HUTTON.—Q. When you left Alaska you asked Mr. Hoelke for a statement, did you not, of your time? A. Yes, sir.

Q. And he gave you that, didn't he (showing)?

A. Yes, sir, that is what he gave me.

Q. And that is your name on the back of it, isn't it? A. Yes, sir.

Q. You wrote that? A. For $25.

Q. And you wrote that name there, didn't you?

A. Wrote for $25; yes, sir.

Q. I am asking you whether that is your name?

A. Yes, sir.

Q. And you wrote that signature there?

A. Yes, sir.

Mr. HUTTON.—I offer that in evidence, if your Honor please, and ask to have it marked Respondent's Exhibit "A."

Q. Where have you been working since you came down here?

A. I have been working along shore, stevedoring.

Q. Where have you worked?

A. Down on the "Greystock," Pier 26, for the California Stevedoring Company.

Q. What months have you worked, and on what ships?

(Testimony of John W. Erickson.)

A. I could not name every ship. I gave a statement of them sometime ago. I have them here.

Q. Did you work on the "C. T. Hall"? A. Yes.

Q. How much did you earn there?

A. I think I earned $25, if I am not mistaken.

Q. Did you work on the "Strathstay"?

A. Yes, sir.

Q. How long did you work there?

A. I think I got there $35 or $36 there. [84]

Q. How many days did you work there?

A. I think a week.

Q. Did you work on the Pacific Mail Dock?

A. Yes, I worked there on two steamers.

Q. How long did you work there?

A. I only worked there about two days, I think it was.

Q. Did you work on the "Santa Clara"?

A. Yes.

The COURT.—How much did you get from the Pacific Mail? A. I earned $11.50.

Mr. HUTTON.—Q. Where did you work last?

A. The very last ship I worked—

Q. —When was the last work you did?

A. On the "Santa Clara."

Q. How long ago is that?

A. It is only two days ago.

Q. How long did you work on her?

A. I made $25 on her; I didn't put that down.

Q. What kind of work did you do?

A. Longshoring, stevedoring.

(Testimony of John W. Erickson.)

Q. Where did you work before that?

A. I worked on the steamer "Eureka."

Q. How many months have you worked altogether since you came down from Alaska?

A. I have not worked steady any months. I didn't do nothing for four weeks until I worked on the "Eureka."

Q. Have you a list there of the places you worked and the ships you worked on since you came down?

A. These are the only people I have worked for.

Mr. WALL.—I object to this line of examination, your Honor, as not proper cross-examination. If he wants that sort of testimony the burden of proof is to produce it directly, if he wants to make the witness his own witness that is a different matter.

The COURT.—The objection is overruled.

Mr. HUTTON.—Q. Will you please tell the Court, commencing with the first work you did when you came down here and finishing with the last, where you worked, who you worked for, and how much you earned? **[85]**

A. I worked on the schooner "C. T. Hall." $25. Pacific Stevedoring Company in September, $35. On the "Murdock," $11.50. On the "Greystock," for the California Stevedoring Company, Steamer "Santa Clara," $36. California Stevedoring Company on the "Greystock" in October, $12. For the California Stevedoring Company on the steamer "S. F. Dollar" in November, $17.50. On the "Greystock," in November, $21. Total, $139.50.

Q. Isn't it $158? A. Total, $139.50.

(Testimony of John W. Erickson.)

Q. Where did you work next?

A. As far as I can remember, I didn't put every steamer down—then on the "Santa Clara" in December,—no, on the "Santa Cruz" in December, $17. December, on the "Santa Clara," $9; the "Hazel Dollar, $20. In January, on the "Santa Clara," $7; on the "St. Cecile," $9; in February, the steamer "Columbia," $15; in February, the steamer "Colusa," $15; in February, the steamer "Great Northern, " $7; in February, the "Great Northern," $8; in March, the "Santa Cruz," $18; in March, the steamer "Pacific," $21; in March, the steamer "Eureka"—she had nitre, $7. In April, the steamer "Christian Bjoa," $22.50; in April, the steamer "Chio Maru," $28; another steamer, $21.50. In May, the steamer "Santa Cruz," $21, and the "St. Cecile," $23; the steamer "Eureka $7.75.

Q. Is that all the money you have earned since you came back from Alaska? A. Yes, sir.

Q. Does your wife work? A. Yes, sir.

Q. You remember swearing to this paper, don't you? That is your signature on that? I am calling your attention to interrogatories that were filed and sworn to by you. A. Yes, sir.

Q. It appears to have been sworn to on the 11th day of December, 1914; calling your attention to interrogatory 4—was your recollection good as to what occurred between you and Mr. Overton at the time you signed this? Did you remember the conversation very well? A. Pretty well. **[86]**

(Testimony of John W. Erickson.)

Q. You remembered it better then than you do now?

A. Well, I suppose I remember it now pretty near as well as then.

Q. Did you testify as follows: "All that was said, as nearly as I can remember, although I don't claim to give the exact words or just the order in which things were said is this, Mr. Overton, first said to me, 'I hear, Cap., you want to go up to Alaska.' I said, 'Yes, I would like to go; I would like to get some station to be boss in and fish at the same time if you want me to, being as I want to take my wife along with me up there'; then he said to me, 'We haven't got no station, but there is a job to run the schooner "Martha Sanburn." If you would like to take that at Pirate Cove I will give you more wages or you may call it more wages than you're getting now; you will get your board and your wife's board and $55 a month. I would like to have you go up there for at least a year or longer if everything is all right, and when you get through with the job of course we will bring you back.' " Was that correct, as far as you went? A. Yes, sir.

Q. And Mr. Overton did say that, then?

A. Yes. sir.

Q. "I would like to have you go up there for at least a year or longer if everything is all right"?

A. For at least a year.

Q. Why didn't you in these interrogatories say something about Mr. Overton saying that he wanted

(Testimony of John W. Erickson.)

you to stay for 5 or 10 years or something of that kind?

A. I didn't put everything in, but of course he said that besides. In the general conversation he told me that he didn't like to send a man up there for a year or so; he said he would like to see a man stay there for 5 or 6 or 10 years,—and then you get acquainted with the work.

Q. Do you remember Mr. Overton on that occasion saying to you he **[87]** didn't want you to take your wife up there? A. No, sir.

Q. Didn't he say this to you, "There is no use of your taking your wife up there because you may not like the job and we may not like you"?

A. No, sir.

Q. Wasn't there anything of that kind said?

A. No, sir.

Q. You are sure about that?

A. Sure, positive.

Q. Did you ever sweep the warehouse out up there? A. Yes, sir.

Redirect Examination.

Mr. WALL.—Q. You said on your cross-examination that when you signed that you signed it for the $25 endorsed up there? A. Yes, sir.

Q. Was that on it at the time you signed it?

A. Yes, sir, it was at the time I signed it for that $25.

[Proceedings Had Relative to Offer of Depositions in Evidence, etc.]

Mr. HUTTON.—We are in rather an unfortunate position here, if your Honor please. Mr. Overton whom he had the conversation with died here some two or three months ago. We framed our answer upon his testimony.

I will offer in evidence the deposition of William Wallsted and also the deposition of M. J. Uldall and Mr. Hoelke, on both direct and cross.

Mr. WALL.—We would like to have the depositions all received subject to the objection as to each deposition on the ground that the whole of the testimony in each deposition does not relate to the issues made by the pleadings, that is, that it does not tend to prove or disprove any of the issues made by the pleadings. We would like to have that objection run to each of the queestions propounded in the interrogatories.

The COURT.—Were these interrogatories prepared here and agreed to before they went up? **[88]**

Mr. WALL.—All these interrogatories were prepared and sent up with a stipulation which is on file that when they were offered in evidence the same objections could be made exactly as if the questions were asked and answered at the trial. Those objections as to each of the direct interrogatories refer to the depositions of Hoelke and Uldall; and further, the objection to all that part of the answer of Hoelke to the 17th interrogatory beginning with the words

"in the manner of handling the vessel" down to the end. The additional objection as being tthe conclusion of the witness and not based on any qualifications. The same objections to that part of the answer to the interrogatory 18 beginning with the words "yet not competent to do so" down to the end. The same objection to the answer to direct interrogatory 19. In addition to the objections already made to the interrogatory to Uldall I move to strike out the answer to the 11th direct interrogatory as not responsive to the question. And as to the testimony of Wallsted, which was taken on open interrogatories, on page 5, I move to strike out that portion of the answer thereto," and I had to go in and call him out then," as being the mere guess of the witness. And also on page 13 of Wallsted's deposition I move to strike out that part of his testimony that says, "I heard him tell some fishermen that he didn't like it up there," as being hearsay.

Mr. HUTTON.—No, if your Honor please, at the time this answer was filed we, in San Francisco, did not know anything about what occurred in Alaska. It took three months to get a letter there and get a reply back again. We had to frame the answer on what we believed and from some casual conversation with the master of the vessel. My impression is that all of these interrogatories are squarely within the issues of the pleadings, but if the Court should think they are not, we will ask leave to amend our answer to conform to the proof. [89]

Mr. WALL.—That is exactly what your Honor said you would do at the time the interrogatories were taken We said that this testimony should be taken without any privilege to amend. These interrogatories were put in the original answer. I objected to the original answer to the interrogatories. Your Honor sustained the objection to the answer and sustained the objection to the interrogatories. Then these interrogatories were prepared with the understanding that the case was to be heard on these interrogatories but with the stipulation that objections could be made as though they were taken at the trial.

Mr. HUTTON.—That is all very true, but then, on the other hand, when I amended the answer I was just as much in the dark as when I filed the original answer. It takes three months to get a letter up there and back, and I had to file an answer within 20 days in this case. I am convinced that every one of these interrogatories are relevant, but if your Honor should hold to the contrary I think, your Honor, that we have a right to amend the answer.

Mr. WALL.—That all took place sometime prior to December of last year, your Honor, and they had ample opportunity since that time to get all the information necessary.

Mr. HUTTON.—I could not get it until these interrogatories came back and they have only come back within two weeks; I could not tell what the testimony was going to be until I got the depositions back again.

(Testimony of John W. Erickson.)

Mr. WALL.—But there was mail communication during that time with Alaska.

Mr. HUTTON.—There are one or two legal points I desire to have your Honor's attention called to.

The COURT.—Is there any further testimony?

Mr. HUTTON.—That is our case.

Mr. WALL.—I will recall Mr. Erickson. **[90]**

[Testimony of John W. Erickson, Recalled in Rebuttal.]

JOHN W. ERICKSON, recalled in rebuttal.

Mr. WALL.—Q. Without waiving the objections made, we desire to take the testimony of the witness in rebuttal of certain answers given in the depositions. What experience have you had as master or mate or second mate of sailing vessels?

A. I have sailed as mate and second mate on similar schooners here and on the Atlantic coast. I used to sail in yachts.

Q. How many sailing schooners have you been the first mate of on this coast? A. Four I think.

Q. How long have you been going to sea?

A. 24 years.

Q. How much of that time have you spent on shore, as near as you can remember?

A. I have spent altogether about eight years on shore.

Q. How long a time were you sailing as first mate, as near as you can remember?

A. About 3 or 4 months in each ship, two or three or four months.

Q. You mean in each ship? A. Yes, sir.

(Testimony of John W. Erickson.)

Q. How many vessels were you in as second mate?

A. Two or three.

Q. And how long were you second mate in those?

A. I was four months in one, the schooner "Volunteer."

Q. And how long in the others?

A. In one I was about two months.

Q. What sailing vessel have you been master of?

A. I was master of a pilot boat.

Q. What pilot boat? A. The "Pathfinder."

Q. Where did she sail from?

A. She sailed out here on the bar; we would hove to and wait for vessels to come in.

Q. What did you have to do in handling her in the way of picking up boats and lowering boats?

A. We hove to all the time. **[91]**

Mr. HUTTON.—There is no issue here about raising small boats.

Mr. WALL.—Your man says he did not know how to heave to.

A. (Continuing.) We hove to at all times; if we have our boat on the lee side as we are hove to, we throw it overboard there; if we don't we always make a tack and heave to on the other and leave the boat out and after the boat is out we pick them up again and we sail around them and get them on the lee side and heave to and hoist our boats on board.

Q. State what the fact was in regard to whether or not Hoelke ever gave you any orders at any time to turn to at any particular time. A. He never did.

(Testimony of John W. Erickson.)

Q. What were your hours for turning to while you were in Alaska?

A. I didn't have no regular hours but I used to turn out for a start at 4 o'clock in the morning, and I went down to the wharf and stayed around and waited for Mr. Hoelke to come and tell me what to do but he never did, so I would go up and eat my breakfast sometime and come out again, and then I would go around the wharf again and stay around there, and I would not know what to do, and Mr. Hoelke would pass by me a dozen times, maybe more, and he wouldn't say a word to me, and I would be standing there like a dummy.

Q. When you took the "Martha" out in the morning, what time would you start to work on her?

A. Generally we started off at about 4 or half-past 4, summer-time.

Q. What way did you have of knowing what you were to do on shore while you were ashore?

A. Only when Mr. Hoelke would tell me what to do.

Q. Did Mr. Hoelke ever tell you to do anything on shore that you did not do? A. No.

Q. How many Sundays were you on shore while you were up there?

A. Only one Sunday, as near as I can remember.

[92]

Q. Did you or not work on that Sunday?

A. I worked half a day on that Sunday.

Q. Did you or did you not ever refuse to work on Sunday when asked to do so? A. No, sir.

(Testimony of John W. Erickson.)

Q. What work did you do that Sunday that you worked?

A. We were assorting some groceries and fruit and so forth in the warehouse.

Q. Did Mr. Hoelke ask you to do that work?

A. Yes, sir.

Q. What time did he ask you?

A. About 10 o'clock, I think, in the morning.

Q. Will you state whether or not Mr. Hoelke ever had to call you after 7 o'clock in the morning?

A. No, sir.

Q. How many men usually constituted the crew of the "Martha" when she was being used?

A. Most of the time I only had one man but at times he was not in the crew.

Q. Who detailed these one or two men that were to go with you as a crew of the "Martha"?

A. Mr. Hoelke.

Q. After the men were detailed to go as crew of the "Martha," in case the "Martha" did not leave port for any reason who ordered the men ashore?

A. Mr. Hoelke.

Q. And after he got back from a trip and you tied up who gave the men orders to go ashore?

A. Mr. Hoelke.

Q. Then, as I understand it, after the crew was sent on board by Hoelke, you took charge of the "Martha" for handling her and handled her during the trip and kept command of her until she got back and tied up?

(Testimony of John W. Erickson.)

A. Yes, sir, after I sailed from the wharf.

Q. Was there ever any man idle on the trip after you took command of her? A. No, sir.

Mr. HUTTON.—I don't think that is material in this case.

Mr. WALL.—Why did Hoelke say that this man would be lying around idle on the vessel? **[93]**

Mr. HUTTON.—He didn't say it in that respect or in that sense; he said sometimes this man would get down two hours late and the men would be around there looking for him.

The COURT.—The objection is overruled.

Mr. WALL.—Q. State whether or not you ever had any talk with Hoelke about tide work.

A. No, sir, I never did.

Q. Will you state whether or not you ever actually did any tide work? A. Yes, sir, I did.

Q. What was it?

A. I discharged the "Martha" with salt over on the mainland once.

Q. Mr. Hoelke said in his testimony, or one of the witnesses for the defendant who testified, stated that you said you didn't come up to Pirate Cove to work and would only do so when you were ready; state whether or not you ever made such a statement of that kind.

A. I never made such a statement.

Q. State whether or not you did all the work which you were ever requested to do on shore.

A. I did everything Mr. Hoelke ever asked me to do.

(Testimony of John W. Erickson.)

Q. State whether or not there was ever any accident of any description in regard to the handling of the "Martha" while you were handling her.

A. Nothing happened to the "Martha" so long as I was on board to her.

Q. When Hoelke told you to pack your clothes and go down on the "Golden State," the next day, did he say anything to you at that time that he was discharging you because you refused to obey orders about turning to? A. No.

Mr. HUTTON.—That is objected to as leading.

The COURT.—The objection is overruled.

Mr. WALL—Q. At that time state whether or not he told you that he had someone who was more reliable and in whom he could put more trust, or anything of that nature. [94]

A. No, sir, he never said nothing like that to me.

Q. Mr. Hoelke in his testimony said something about your not keeping the sheets of the "Martha" in instead of slacking them out and running before the wind: state what the fact was in regard to that.

A. Mr. Hoelke was never with me when I had a fair wind. The channel in Pirate Cove is a very narrow channel, it is only about altogether about 10 feet wide, and of course the water is pretty low then and sandbanks stuck up quite a lot and the buoy stands there, and in order to come through there you have to haul your sheets in or else the boom will take the buoy off, or if she hauls over she will run on a sandbank, and so I guessed I did have my main sheet in coming in through the channel there,

(Testimony of John W. Erickson.)

but it was not because I didn't know better than that.

Q. He also testified you had some trouble, or he thought that you didn't heave to properly when you came in, and when he tacked around you with the launch; what is the fact about that?

A. I never hove to because at that time he used to pick me up every once in awhile outside there, as I would have no wind; at this particular time I didn't have very much wind and of coure there was no cause for heaving to. His launch is very handy; he would come around my stern and come up to windward and I would throw him a line and that is all there was to it.

Q. Could his launch go faster than you?

A. Oh, yes, two or three times faster than me; I didn't have very much wind.

Q. Mr. Hoelke said your wife was up on the roof with you once when you were shingling; state what the truth was in regard to that.

A. I was shingling the store down there, putting some shingles on that had blown off, and my wife was standing down [95] below; she just came out of the house; the house I lived in was right next to the store; she was standing down below at the ladder there; she was never up on the roof.

Q. State whether or not Hoelke ever said anything to you about your wife being around while you were working.

A. He never said a word to me about that.

Q. Mr, Hoelke said that at one time you refused to load or unload the "Martha;" state what the truth

(Testimony of John W. Erickson.)

was in regard to that.

A. I never refused to load or unload the "Martha;" *state what the truth was in regard to that?*

A. I never refused to load or unload the "Martha."

Q. As a matter of fact, did you ever assist in loading or unloading the "Martha"?

A. I always did.

Q. Did you ever pack sacks from the "Martha" to the galley?

A. Yes, sir, I pulled the dory ashore and afterwards packed the sacks up to the salt-house on the main land.

Q. Did you ever have any conversation with Hoelke or did Hoelke ever say anything to you about whether or not he wanted you up there for that job?

Mr. HUTTON.—Objected to as leading and within the issues and not in rebuttal of anything.

The COURT.—The objection is overruled.

Mr. WALL.—Q. Did he have any conversation? with you?

A. I didn't have no conversation with him only at one time he told me—

Q. —When was this,—what time was it?

A. It was a few days—it was the time I was supposed to go to the main land.

Q. How long after you got up there?

A. About 7 or 8 days, I think, the first time he ever spoke to me.

Q. What was the conversation about? [96]

(Testimony of John W. Erickson.)

Mr. HUTTON,—We move to strike that out upon the ground it puts respondent at a great disadvantage. Mr. Hoelke was in Alaska; there was no opportunity of sending an interrogatory to him upon that matter. It comes out now for the first time at the close of the case.

The COURT.—The objection is sustained. This is like any other testimony. It would be admitted for the purpose of showing the animus of the witness Hoelke, and perhaps for discharging him, but Hoelke should have had a chance to explain it when these interrogatories were sent up.

Mr. WALL.—I don't think it is especially material; it is only because of Hoelke's testimony that all these questions are asked. I don't think Hoelke's testimony is material.

Q. Did you ever refuse to work on any holiday up there? A. No.

Q. State whether or not you worked hours longer than from 7 in the morning until 5 in the afternoon.

A. When I was in the "Martha" I was always working; of course, I had to be up night and day when I was in her and when we were sailing.

Cross-examination.

Mr. HUTTON.—Q. You had several disagreements with Mr. Hoelke up there, did you not?

A. No, sir.

Q. Never any at all?

A. Only one, and that was not a disagreement, it was only a case of my wife going with me.

Q. And you insisted upon taking her?

(Testimony of John W. Erickson.)

A. I did not insist upon taking her.

Q. Is it not a fact that you had your wife with you whenever you worked up there in Alaska?

A. No, sir.

Q. Did you take your wife with you on the vessel?

A. No, sir.

Q. Mr. Halleck objected and stopped you from doing so, did he not?

A. Mr Hoelke was the cause of my wife wanting to go with me. [97]

Q. Is it not a fact that while you were up there you asked Mr. Hoelke to change you and put you in another station? A. No, sir.

Q. You did not? A. No, sir.

Redirect Examination.

Mr. WALL.—Q. What was the conversation about your wife going with you, between you and Mr. Hoelke?

A. The conversation was this: I went down one morning as I was to sail for Sanburn, and I said to Mr. Hoelke, "Is there any objection, Mr. Hoelke, to my wife going along with me?" and he says, "No," and I says "all right," and I went and told my wife she could go along; when she came down and was ready to go then the fellow who was supposed to be with me would not go with me because my wife was to go along with me, and then he says, "Well, you ought to have men along with you"—

Q. You mean that Hoelke said that?

A. Yes, and he says, "If your wife goes along I can't get anybody to go with you." He promised

(Testimony of John W. Erickson.)

she could go. Then I said to the fellow who was to go along, "What's the matter with you? Won't you go along?" And he said, "No."

Q. Is that all that was said between you and Hoelke about your wife going?

A. Yes, that is about all.

[Testimony of Mrs. John W. Erickson, for Plaintiff, in Rebuttal.]

Mrs. JOHN W. ERICKSEN, called for plaintiff in rebuttal, sworn.

Mr. WALL.—Q. You heard the testimony about your going on the vessel with your husband?

A. Yes, sir.

Mr. HUTTON.—That is not the way to examine the witness, if your Honor please; he should ask questions of her directly.

Mr. WALL.—We want to save some time.

Q. State whether or not you ever had any conversation with Mr. Hoelke about going on the vessel with your husband. [98]

A. On the "Martha"?

Q. Going on the "Martha" with your husband. Did you or did you not ever have any conversation—yes or no? A. Yes, sir.

Q. Where was that conversation?

A. It was at Mr. Hoelke's house.

Q. How did the subject come up?

A. Well, I wanted to go with my husband and Mr. Hoelke said I could go.

Q. He said to you there at the time that you could go? A. Yes, sir.

(Testimony of Mrs. John W. Erickson.)

Q. Was your husband present then?

A. No, he was down on the boat.

Cross-examination.

Mr. HUTTON.—Q. Is it not a fact Mr. Hoelke told you you could not go because there were only two berths on the ship and there would be no place for you to sleep?

A. That was after he came back to the house. I was still at the house; that was after he came back from the boat.

Q. He did tell you that, didn't he?

A. After he had told me I could go.

Q. He told your husband that? A. Yes, sir.

Q. And then your husband still insisted on your going, didn't he? A. No, sir.

Q. He did not? A. No, sir.

Mr. WALL.—That is the libelant's case.

[Endorsed]: Filed Sep. 23, 1915. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [99]

In the District Court of the United States in and for the Northern District of California, First Division.

IN ADMIRALTY—No. 15,706.

JOHN W. ERICKSEN,

Libelant,

vs.

UNION FISH COMPANY, a Corp.

Respondent.

(Opinion and Order to Enter Judgment in Favor of Libelant for $716.05, With Interest and Costs.)

F. R. WALL, Esq., Proctor for Libelant.

H. W. HUTTON, Esq., Proctor for Respondent.

Libelant was hired for a year, his services under the contract beginning June 12th, 1914. On July 18th he was discharged without cause. For his services he was to receive $55 per month, and board and lodging for himself and wife. The value of such board and lodging was, according to the evidence, $55 per month. He was paid for his services up to July 18th, and board and lodging was furnished up to August 5th, 1914. He is therefore entitled to judgment for $55.00 a month from July 18th, 1914, to June 12th, 1915, as wages, and $55 a month from August 5th, 1914, to June 12th, 1915, for board and lodging, less such sums as he was able to earn in other employment during these periods. For wages, therefore, he is entitled to $594 and for board and lodging he is entitled to $562.80, a total of $1156.80. But from this must be deducted $440.75, being the amount earned by him in such employment as he could secure during the period. This leaves $716.05, for which he is entitled to judgment. Judgment will therefore be entered for this amount with interest and costs.

September 8th, 1915.

M. T. DOOLING,
Judge.

[Endorsed]: Filed Sep. 8, 1915. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [100]

In the United States District Court in and for the Northern District of California, First Division.

IN ADMIRALTY—No. 15,706.

JOHN W. ERICKSEN,

Libelant,

vs.

UNION FISH COMPANY, a Corporation.

Respondent.

Final Decree.

This cause having been heard on the pleadings and proofs, and having been argued and submitted by the advocate and proctor for the respective parties, and due deliberation having been had, it is now by the Court ORDERED, ADJUSTED and DECREED that the respondent in said cause, Union Fish Company, a Corporation, pay to the libelant, John W. Ericksen, the sum of seven hundred and sixteen dollars and five cents ($716.05), and interest amounting to the sum of thirty-seven dollars and seventy cents ($37.70), and libelant's costs to be taxed; and that libelant have interest on said sums from the date of this decree until the same be paid at the rate of six per centum per annum.

Dated September 10, 1915.

M. T. DOOLING,
District Judge.

[Endorsed]: Filed Sep. 10, 1915. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [101]

In the District Court of the United States, in and for the Northern District of California, First Division.

IN ADMIRALTY.

JOHN W. ERICKSON,

Libelant,

vs.

UNION FISH COMPANY, a Corporation,

Respondent.

(Notice of Appeal.)

Respondent above-named, appeals to the United States Circuit Court of Appeals for the Ninth Circuit, from the final decree entered and made in the above cause on the 10th day of September, 1915, and from each and every part of said decree.

To the libelant above named and to F. R. Wall, Esq., his proctor.

Dated September 20th, 1915.

H. W. HUTTON,
Proctor for Respondent.

Copy received this 20th day of September, 1915.

F. R. WALL,
Proctor for Libelant.

[Endorsed]: Filed Sep. 20, 1915. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [102]

In the District Court of the United States in and for the Northern District of California, First Division.

IN ADMIRALTY.

JOHN W. ERICKSON,

Libelant,

vs.

UNION FISH COMPANY, a Corporation.

Respondent.

Assignment of Errors.

Comes now Union Fish Company, respondent and appellant herein, and assigns the following errors, in the record, opinion, decision and final decree in the *above entitled, to wit:*

1. The District Court erred in overruling respondents exceptions to the libel herein.

2, The District Court erred in not finding and deciding that it had no jurisdiction over the subject matter of libelants alleged cause of action.

3. The District Court erred in rendering a decree herein in favor of libelant, and further erred in not dismissing libelants libel.

4. The District Court erred in not finding and deciding that the contract alleged in libelants libel was void, as being an alleged contract not to be performed within a year.

5. The District Court erred in finding and deciding that this respondent ever made a contract to employ libelant for the period of at least a year, or

for any period at all other than at the will of either party to said contract.

6. The District Court erred in not finding and deciding that this respondent was justified in discharging libelant. [103]

7. The District Court erred in rendering a decree in favor of libelant for the sum of seven hundred and sixteen dollars and five cents and interest as specified in said decree, and in rendering a decree in favor of libelant for any sum whatever.

8. The District Court erred in rendering a decree covering compensation and including compensation for services that were to be, if performed, rendered on land.

10. The District Court erred in not finding and deciding that respondent herein did not contract with libelant and engage to hire him for at least a year, and in not finding and deciding that there was no proof that the agent whom it is claimed made such contract had authority to make such a contract.

11. The District Court erred in not finding and deciding that the language testified to by libelant did not show that a contract for at least a year had been made with libelant.

WHEREFORE said respondent prays that each of said assignment of errors be allowed and the said decree dismissed, and that it may have such other and further relief as the Court is competent to give in the premises.

H. W. HUTTON,
Proctor for Respondent and Appellant.

[Endorsed]: Filed Oct. 18, 1915. W. B. Maling, Clerk. By T. L. Baldwin, Deputy Clerk. **[104]**

(Respondent's Exhibit "A")

Pirate Cove, July 18, 1914.

JOHN W. ERICSEN.

Bal. Due with U. F. Co.....87.64

R. HOELKE,

Agt.

PAID.
Aug. 7, 1914.
UNION FISH CO.

	25
Chgd.	62.64
"Golden State"	$26.85
Stations	60.80
	87.65

[Endorsed]: Aug. 5, 1914. Paid Coin $25.00.
JOHN W. ERICKSEN.

U. S. Dist. Court No. 15,706. Ericksen vs. Union Fish Co. Respts. Exhibit No. "A." Filed June 16, 1915. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. **[105]**

Certificate of Clerk U. S. District Court to Apostles on Appeal.

I, Walter B. Maling, Clerk of the District Court of

the United States, for the Northern District of California, do hereby certify the foregoing 105 pages, numbered from 1 to 105, inclusive, to contain a full, true and correct transcript of the records and proceedings, as the same now remain on file and of record in the office of the clerk of said District Court, in the cause entitled John W. Ericksen, Libelant vs. Union Fish Company, a Corp., Respondent, Number 15,706, which said Apostles on Appeal are made up pursuant to and in accordance with "Praecipe" and "Additional Praecipe for Apostles on Appeal" (copies of which are included in the foregoing transcript), and the instructions of H. W. Hutton, Esquire, Proctor for Respondent and Appellant herein.

I further certify that the costs of preparing and certifying the foregoing Apostles on Appeal are the sum of Fifty-four Dollars and Twenty Cents ($54.20), and that the same have been paid to me by the proctor for appellant herein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 9th day of November, A. D. 1915.

[Seal] WALTER B. MALING,
Clerk.
By C. W. Calbreath,
Deputy Clerk.

CMT.

[Ten Cent Internal Revenue Stamp. Canceled 11/9/15. C. W. C.] **[106]**

[Endorsed]: No. 2680. United States Circuit Court of Appeals for the Ninth Circuit. Union Fish Company, a Corporation, Appellant, vs. John W. Erickson, Appellee. Apostles on Appeal. Upon Appeal from the United States District Court for the Northern District of California, First Division.

Filed November 9, 1915.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Meredith Sawyer,

Deputy Clerk.

In the District Court of the United States in and for the Northern District of California, First Division.

IN ADMIRALTY.

JOHN W. ERICKSON,

Libelant and Appellee,

vs.

UNION FISH COMPANY,

Respondent and Appellant.

Order Extending Time to November 9, 1915, to File Apostles on Appeal.

Good cause appearing therefor, it is hereby ordered that the time for filing the apostles on appeal with the United States Circuit Court of Appeals for the Ninth Circuit, in the above-entitled cause, be and the same is hereby extended twenty days from and after the 20th day of October, 1915.

Dated October 18th, 1915.

M. T. DOOLING,
Judge.

[Endorsed]: No. 15,706. In the District Court of the United States, Northern District of California, First Division. In Admiralty. John W. Erickson, Libellant, vs. Union Fish Company, Respondent. Order Extending Time to file Apostles on Appeal.

No. 2680. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Rule 16 Enlarging Time to November 9, 1915, to File Record Thereof and to Docket case. Filed Oct. 18, 1915. F. D. Monckton, Clerk. Refiled November 9, 1915. F. D. Monckton, Clerk.

[Endorsed]: Printed Apostles on Appeal. Filed Mar. 3, 1916. F. D. Monckton, Clerk.

No. 2680

United States

Circuit Court of Appeals

For the Ninth Circuit.

UNION FISH COMPANY, a Corporation,
Appellant,

vs.

JOHN W. ERICKSON,
Appellee.

Upon Appeal from the United States District Court for the Northern District of California, First Division.

PROCEEDINGS HAD IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

At a stated term to wit, the October term, A. D. 1915, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Wednesday, the twenty-second day of March, in the year of our Lord one thousand nine hundred and sixteen. Present: The Honorable WILLIAM B. GILBERT, Senior Circuit Judge, Presiding; Honorable ERSKINE M. ROSS, Circuit Judge; Honorable WILLIAM W. MORROW, Circuit Judge.

No. 2680.

UNION FISH COMPANY, a Corporation.

Appellant,

vs.

JOHN W. ERICKSON,

Appellee.

Order of Submission.

By consent of Mr. H. W. Hutton, counsel for the appellant, and Mr. F. R. Wall, counsel for the appellee, ORDERED, appeal in the above-entitled cause submitted to the Court for consideration and decision on briefs on file.

At a stated term, to wit, the October term, A. D. 1915, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the court-room thereof, in the City and County of San Francisco, in the State of California, on Monday, the fourteenth day of August, in the year of our Lord one thousand nine hundred and sixteen. Present: The Honorable WILLIAM W. MORROW, Circuit Judge, Presiding; Honorable WILLIAM H. HUNT, Circuit Judge.

No. 2690.

UNION FISH COMPANY, a Corporation,
Appellant,

vs.

JOHN W. ERICKSON,
Appellee.

Order Directing Filing of Opinion and Filing and Recording of Decree.

By direction of the Honorable William B. Gilbert, Erskine M. Ross, and William W. Morrow, Circuit Judges, before whom the cause was heard, ORDERED that the typewritten opinion this day rendered by this Court in the above-entitled cause be forthwith filed by the clerk, and that a Judgment be filed and recorded in the Minutes of this court in said cause in accordance with said opinion.

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 2680.

UNION FISH COMPANY,

Appellant,

vs.

JOHN W. ERICKSON,

Appellee.

Opinion, U. S. Circuit Court of Appeals.

Upon Appeal from the United States District Court for the Northern District of California, First Division.

Before GILBERT, ROSS and MORROW, Circuit Judges.

ROSS, Circuit Judge:

The appellant, as shown by the record, is a California corporation having its principal place of business at the City of San Francisco, engaged in fishing, and having a salting station at Pirate Cove, Alaska, and owning at the times in question a certain American vessel called the "Martha." The ground of the libel, which was filed in the court below by the appellee, is as follows:

"That in the month of May, 1914, at said San Francisco, said respondent and said libelant entered into an oral contract or agreement of hiring wherein and whereby it was mutually agreed that said libelant was to proceed to Pirate Cove, Alaska, and after

arrival there to serve the respondent as master of said schooner 'Martha' for a period of not less than one year and also during said time to assist the manager of said respondent's salting station at said Pirate Cove when possible to do so without interfering with libelant's duties as said master of said schooner; that it was further agreed by said respondent and said libelant that said libelant was, during said time, to receive for said services wages at the rate of $55 a month and board and lodging for himself and his wife, and, at the end of not less than one year, transportation from said Pirate Cove to said San Francisco; that in accordance with said agreement, said libelant proceeded to said Pirate Cove, where he arrived on or about the 12th day of June, 1914, and thereupon entered upon the performance of his duties as aforesaid and continued to perform the same until the 18th day of July, 1914, when libelant was, by said respondent without fault on libelant's part, discharged from the services of said respondent, and Libelant and his wife were thereupon by said respondent furnished with transportation from said Pirate Cove to said San Francisco; that said respondent has paid libelant the aforesaid wages at the rate of $55 a month up to and including the 15th day of July, 1914, and furnished board and lodging to said libelant and his wife up to August 5, 1914, and for no further or other time; that on said 18th day of July, and at all times since then said libelant was and has been and still is ready, willing and able to perform his part

of said contract of hiring; that because of the breach of said contract of hiring as aforesaid libelant has been damaged in a sum of not less than $1430, which sum he asks this court to award to him."

Certain of the points relied upon by the appellant are based upon its contention that a part of the contract is maritime in character and a part non-maritime.

We see no merit in the contention. It is conceded, as a matter of course, that the employment of the appellee by the appellant as master of the schooner was a maritime contract, but it is said that because by the terms of the contract the libelant was also to help the company's agent at Pirate Cove in certain work on shore, there was no jurisdiction in admiralty.

In Alaska Packers' Assn. v. Domenico, 117 Fed. 99, this Court affirmed the jurisdiction in admiralty of a contract made by men who acted as seamen to and from salmon fishing grounds in Alaska, to work as fishermen during the season, and assist in canning fish on shore, and in loading them on board for transportation and notwithstanding that the men while engaged in fishing slept on shore and mended their nets and cared for the fish on shore.

In North Alaska Salmon Co. v. Larsen, 220 Fed. 93, the contract which was the basis of the libel provided for the services of the libelant as a seaman, fisherman, beachman, trapman, "and such other services as might be required" by the appellant's superintendent; and the contention there made was that the above quoted clause of that contract ren-

dered it nonmaritime. In holding against that contention we cited with approval the case of Alaska Packers' Assn. v. Domenico, *supra,* and also that of The Minna, 11 Fed. 759, decided by Judge Brown, afterwards an associate justice of the Supreme Court, where he said:

> "All hands employed upon a vessel, except the master, are entitled to a lien for their services, or in furtherance of the main object of the enterprise in which he is engaged. * * * I do not regard the fact that libelant slept upon shore at night and there reeled out and mended the nets as qualifying in any way the nature of his contract. These services were merely incidental and subsidiary to his main contract."

In Keyser v. Blue Star S. S. Co., Ltd., 91 Fed. 267, it was held, among other things, that "where a provision of a charter-party of a foreign vessel, though not in itself maritime in character, is so connected with the other stipulations therein as to render it an essential part of the contract, and it appears probable that without it the contract would not have been entered into by the owners, a court of admiralty has jurisdiction of an action for an alleged breach of such a provision."

In Church v. Shelton, 2 Curt. 271, 274, Judge Curtis said that the contract being maritime the admiralty "will proceed to inquire into all its branches and all the damages suffered thereby, however peculiar they may be and whatever issues they involve." And in Ben. Adm., 4th Ed., Sec. 143, it is said:

"If a contract is maritime in itself, it carries all its incidentals with it, and the latter, though nonmaritime in themselves, will be heard and decided." See, also, Id., Sec. 16.

It is perfectly apparent from the present contract that the main employment of the appellee by the appellant was for services as master of the schooner, and that his additional services in aid of the appellant's manager at Pirate Cove were purely incidental thereto, for it is in express terms declared that after arriving at that station the appellee should serve as master of the schooner for a period not less than one year and during such time should also assist the appellant's manager there *when possible to do so without interfering with his duties as such master.*

It is also contended on the part of the appellant that the finding of the court below to the effect that the libelant was discharged without cause on July 18, 1914, was not sustained by the evidence, but an examination of it satisfies us that it is.

The appellant's main point, however, is that the contract was absolutely void because of the then provision of the Civil Code of California which reads as follows:

"The following contracts are invalid unless the same or some note or memorandum thereof is in writing and subscribed by the party to be charged, or by his agent:

1. An agreement that by its terms is not to be performed within a year from the making thereof. * * * " (Sec. 1624.)

The Alaska Code, Sec. 1044, contains the same provision.

It is insisted that courts of admiralty are bound by that statutory provision, and therefore that there was no basis for the present libel.

In the case of Workman v. New York City, Mayor, &c., 179 U. S. 552, 560, the Court (four of the justices dissenting) distinctly adjudged that neither the local law nor any of the decisions of a State can deprive one of the right to relief "in a case where redress is afforded by the maritime law and is sought to be availed of in a cause of action maritime in its nature and depending in a court of admiralty of the United States."

The judgment is affirmed.

[Endorsed]: Opinion. Filed Aug. 14, 1916. Frank D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 2680.

UNION FISH COMPANY, a Corporation,
Appellant,

vs.

JOHN W. ERICKSON,
Appellee.

Decree U. S. Circuit Court of Appeals.

Appeal from the District Court of the United States for the Northern District of California, First Division.

This cause came on to be heard on the Transcript of the Record from the District Court of the United States for the Northern District of California, First Division, and was duly submitted.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court, that the decree of the said District Court in this cause be, and hereby is, affirmed, with costs in favor of the appellee and against the appellant.

It is further ordered, adjudged and decreed by this Court, that the appellee recover against the appellant for his costs herein expended, and have execution therefor.

[Endorsed]: Decree. Filed and entered August 14, 1916. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

At a stated term, to wit, the October term, A. D. 1916, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Monday, the ninth day of October, in the year of our Lord one thousand nine hundred and sixteen. Present: The Honorable WILLIAM B. GILBERT, Senior Circuit Judge, Presiding; Honorable ERSKINE M. ROSS, Circuit Judge; Honorable WILLIAM W. MORROW, Circuit Judge.

No. 2680.

UNION FISH COMPANY, a Corporation,
Appellant,

vs.

JOHN W. ERICKSON,
Appellee.

Order Denying Petition for a Rehearing.

On consideration thereof, it is ORDERED that the Petition, filed September 13, 1916, on behalf of the appellant, for a rehearing of the above-entitled cause be, and hereby is denied.

At a stated term, to wit, the October term, A. D. 1916, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the court-room thereof, in the City and County of San Francisco, in the State of California, on Wednesday, the eleventh day of October, in the year of our Lord one thousand nine hundred and sixteen. Present: The Honorable WILLIAM B. GILBERT, Senior Circuit Judge, Presiding; Honorable WILLIAM W. MORROW, Circuit Judge; Honorable WILLIAM H. HUNT, Circuit Judge.

No. 2680.

UNION FISH COMPANY, a Corporation,
Appellant,

vs.

JOHN W. ERICKSON,
Appellee.

Order Staying Issuance of Mandate Under Rule 32 Until Petition to Supreme Court U. S. for Writ of Certiorari is Disposed of on Condition that Such Petition be Docketed Thirty Days from and After the 11th Instant.

Upon motion of Mr. William B. Acton, on behalf of counsel for the appellant, and good cause therefor appearing, it is ORDERED that the Mandate under Rule 32 of this Court in the above-entitled cause be, and hereby is stayed until the petition of the appellant to the Supreme Court of the United States for the issuance of a Writ of Certiorari herein, be disposed of by the said Supreme Court, on condition that the said petition be docketed in the said Supreme Court within thirty (30) days from and after the 11th instant.

At a stated term, to wit, the October term, A. D. 1916, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Friday, the tenth day of November, in the year of our Lord one thousand nine hundred and sixteen. Present: The Honorable WILLIAM B. GILBERT, Senior Circuit Judge, Presiding; Honorable WILLIAM W. MORROW, Circuit Judge; Honorable WILLIAM H. HUNT, Circuit Judge.

No. 2680.

UNION FISH COMPANY, a Corporation,
Appellant,

vs.

JOHN W. ERICKSON,
Appellee.

Order Staying Issuance of Mandate Under Rule 32 Until Petition to Supreme Court U. S. for Writ of Certiorari is Disposed of on Condition That Such Petition be Docketed Within Ten Days From and After the 10th Instant.

Upon application of Mr. William B. Acton, on behalf of counsel for the appellee, and good cause therefor appearing, it is ORDERED that the Mandate of this Court under Rule 32 in the above-entitled cause be, and hereby is stayed until the Petition to be made on behalf of the appellee to the Supreme Court of the United States for the issuance of a Writ of Certiorari herein, be disposed of by the said Supreme Court, on condition that the said Petition be docketed in the said Supreme Court within ten (10) days from and after the 10th instant.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 2680.

UNION FISH COMPANY, a Corporation,
Appellant,

vs.

JOHN W. ERICKSON,
Appellee.

Praecipe for Certified Apostles on Appeal and Proceedings.

To the Clerk of the said Court:

Sir: Please make and furnish me with a certified printed Apostles on Appeal (including the proceedings had in said Circuit Court of Appeals) and not less than nine uncertified copies thereof to be used on an application to be made to the Supreme Court of the United States for the issuance of a Writ of Certiorari under section 240 of the Judicial Code, in the above-entitled cause, the said Apostles to consist of a copy of the following:

1. Printed Apostles on which the cause was heard in said Circuit Court of Appeals, and to which will be added a printed copy of the following:
2. Order of Submission, entered Mar. 22, 1916;
3. Order Directing Filing of Opinion, etc., entered Aug. 14, 1916;
4. Opinion, filed Aug. 14, 1916;
5. Decree, filed and entered, Aug. 14, 1916;
6. Order Denying Petition for Rehearing, entered Oct. 9, 1916;
7. Order Staying Issuance of Mandate, entered Oct. 11, 1916;
8. Order Staying Issuance of Mandate, entered Nov. 10, 1916;
9. Praecipe for Apostles on Appeal, etc.; and

10. Certificate of Clerk, U. S. Circuit Court of Appeals to said Apostles.

H. W. HUTTON,
WILLIAM DENMAN,
Counsel for Appellant.

[Endorsed]: Praecipe for Certified Copy of Apostles on Appeal and Proceedings. Filed Nov. 11, 1916. F. D. Monckton, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 2680.

UNION FISH COMPANY, a Corporation,
Appellant,
vs.
JOHN W. ERICKSON,
Appellee.

Certificate of Clerk U. S. Circuit Court of Appeals to Record Certified Under Section 3 of Rule 37 of the Rules of the Supreme Court of the United States.

I, Frank D. Monckton, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing one hundred and thirty-eight (138) pages, numbered from and including 1 to and including 138, to be a true copy of the entire record of the above-entitled case in the said Circuit Court of Appeals, made pursuant to praecipe of counsel for the appellee, filed November 11, 1916, and certified under section 3 of Rule 37 of the Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

ATTEST my hand and the Seal of the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 16th day of November, A. D. 1916.

[Seal] F. D. MONCKTON,
Clerk.
By Paul P. O'Brien,
Deputy Clerk.

UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Ninth Circuit, Greeting:

Being informed that there is now pending before you a suit in which Union Fish Company is appellant, and John W. Erickson is appellee, which suit was removed into the said Circuit Court of Appeals by virtue of an appeal from the District Court of the United States for the Northern District of California, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the eleventh day of January, in the year of our Lord one thousand nine hundred and seventeen.

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

[Endorsed:] Docketed. *Docketed.* File No. 25,619. Supreme Court of the United States, No. 789, October Term, 1916. Union Fish Company vs. John W. Erickson. Writ of Certiorari. No. 2680. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jan. 18, 1917. F. D. Monckton, Clerk U. S. Circuit Court of Appeals for the Ninth Circuit.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 2680.

UNION FISH COMPANY, a Corporation, Appellant,

vs.

JOHN W. ERICKSON, Appellee.

Stipulation of Counsel Relative to Return to Writ of Certiorari.

It is hereby stipulated and agreed by and between the proctors for the appellant above named and the proctor for the appellee above named that the certified transcript of the record used on the application to the Supreme Court of the United States for a Writ of Certiorari in the above entitled cause, and now on file in said Supreme

Court, shall be deemed the certified transcript of record and proceedings on return to the writ of certiorari issued out of the said Supreme Court in the above-entitled cause; and that the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit in making his return to the said writ may attach thereto a certified copy of this stiuplation in lieu of another certified transcript of the said record.

Dated, January 19th, 1917.

(Signed) G. S. ARNOLD,
THOMAS A. THACHER,
DENMAN & ARNOLD,
Proctors for Appellant.
F. R. WALL,
Proctor for Appellee.

[Endorsed:] Stipulation of counsel relative to return to writ of certiorari. Filed Jan. 24, 1917. F. D. Monckton, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 2680.

UNION FISH COMPANY, a Corporation, Appellant,

vs.

JOHN ERICKSON, Appellee.

Certificate of Clerk U. S. Circuit Court of Appeals to Stipulation of Counsel Relative to Return to Writ of Certiorari.

I, Frank D. Monckton, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the next preceding page to be a full, true and correct copy of "Stipulation of Counsel Relative to Return to Writ of Certiorari," filed in the above-entitled cause on the 24th day of January, A. D. 1917, as the original thereof remains on file and of record in my office.

Attest my hand and the Seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 25th day of January, A. D. 1917.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 2680.

UNION FISH COMPANY, a Corporation, Appellant,

vs.

JOHN W. ERICKSON, Appellee.

Return to Writ of Certiorari.

By direction of the Honorable the Judges of the United States Circuit Court of Appeals for the Ninth Circuit, I, Frank D. Monckton, as Clerk of said Court, in obedience to the annexed writ of certiorari issued out of the Honorable the Supreme Court of the United States and addressed to the Honorable the Judges of the United States Circuit Court of Appeals for the Ninth Circuit, commanding them to send, without delay, to the said Supreme Court the record and proceedings in the above-entitled cause, do attach to the said Writ and send to the said Supreme Court a certified copy of a "Stipulation of Counsel Relative to Return to Writ of Certiorari," in which said stipulation it is provided that the certified Transcript of the Record heretofore filed by the appellant in said cause in the said Supreme Court as a part of its petition for a Writ of Certiorari may be taken as the Return to the said Writ of Certiorari, the original of which stipulation was filed in my office on the 24th day of January, A. D. 1917.

In Testimony Whereof, I have hereunto set my hand and affixed the Seal of the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 25th day of January, A. D. 1917.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

[Endorsed:] 789/25,619.

[Endorsed:] File No. 25,619. Supreme Court U. S., October term, 1916. Term No. 789. Union Fish Co., Petitioner, vs. John W. Erickson. Writ of certiorari and return. Filed February 8, 1917.

No. [redacted]

In the Supreme Court of the United States

Union Fire Company (a corporation),

Petitioner,

vs.

John W. Erickson,

Respondent.

PETITION TO THE SUPREME COURT OF THE UNITED STATES.

Under the act of Congress of March 3, 1916, for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

No.

In the Supreme Court

OF THE

United States

UNION FISH COMPANY (a corporation),
Petitioner,

vs.

JOHN W. ERICKSON,
Respondent.

PETITION TO THE SUPREME COURT OF THE UNITED STATES.

To the Honorable the Supreme Court of the United States:

Your petitioner, Union Fish Company, respectfully presents to this court this, its petition for a writ of certiorari, addressed to the United States Circuit Court of Appeals for the Ninth Circuit, commanding said court and the clerk thereof to certify to the Supreme Court of the United States, the record and proceedings in the case of Union Fish Company, a corporation, Appellant, v. John W. Erickson, Respondent, together with its opinion therein, for the review and determination of said cause by the Supreme Court of the United

States as provided in section 240 of the Act of Congress approved March 3, 1911.

I.

The libel in said action set forth that during the month of May, 1914, at San Francisco, California, the libelant and respondent entered into an oral contract, whereby it was agreed that the libelant should proceed to 'Pirate Cove, Alaska, and, after arriving at that place, serve for a period of not less than one year as master of the schooner "Martha", and perform certain other duties, for a stipulated compensation. The libel further stated that, in accordance with said oral agreement, the libelant proceeded to Pirate Cove, Alaska, and performed the duties for which he was obligated, until July 18, 1914, when he was wrongfully discharged by the respondent. This discharge was claimed to constitute a breach of said contract, and libelant prayed damages therefor.

Exceptions to the libel were filed, upon the ground that the oral agreement was void under subdivision 1 of section 1624 of the Civil Code of California (statute of frauds). The exceptions were overruled and the respondent thereupon answered.

The answer denied that the agreement was as alleged in the libel and further set forth that the libelant was discharged by reason of his inefficiency, carelessness and unsatisfactory conduct.

The lower court found that, under the oral contract made in May, 1914, at San Francisco, California, the libelant was hired by respondent for a year from June 12, 1914, and that libelant was discharged by respondent without cause on July 18, 1914.

From the decree an appeal was taken to the Circuit Court of Appeals. Before that court, *inter alia,* it was argued that the agreement was void under the above mentioned section 1624 of the Civil Code of California. The judgment of the lower court was affirmed.

A petition for rehearing in the Circuit Court of Appeals was then filed, in which it was argued solely that the agreement was void under the California statute mentioned. This petition was denied.

The only question to be raised in this petition for certiorari is, whether a maritime contract made orally in California, which by its terms is not to be performed within a year from the making thereof, is enforcible in the United States court in admiralty.

II.

The portion of section 1624 (California Civil Code) pertinent to this petition reads:

> "§ 1624. The following contracts are invalid, unless the same, or some note or memorandum thereof, is in writing and subscribed by the party to be charged, or by his agent:
>
> 1. An agreement that by its terms is not to be performed within a year from the making thereof;"

The District Court held that the section did not apply to the agreement for the following reason:

> "In a suit in admiralty involving a contract so purely maritime as the hiring of the master of a vessel, the court will not be bound by the statutes of fraud or of limitations of individual states."

The Circuit Court of Appeals disposed of the question as follows:

> "The appellant's main point, however, is that the contract was absolutely void because of the then provision of the Civil Code of California which reads as follows:
>
> " 'The following contracts are invalid unless the same or some note or memorandum thereof is in writing and subscribed by the party to be charged, or by his agent:
>
> " '1. An agreement that by its terms is not to be performed within a year from the making thereof * * * (Section 1624)'.
>
> "Alaska Code, section 1044, contains the same provision.
>
> "It is insisted that courts of admiralty are bound by that statutory provision, and therefore, that there was no basis for the present libel.
>
> " 'In the case of Workman v. New York City, Mayor, etc., 179 U. S. 552, 560, the court (four of the justices dissenting) distinctly adjudged that neither the local law nor any of the decisions of a state can deprive one of the right to relief "in a case where redress is afforded by the maritime law and is sought to be availed of in a cause of action maritime in its nature and depending in a court of admiralty of the United States".'
>
> "The judgment is affirmed."
>
> 235 Fed. 385 at 387.

If the reasoning in the opinions of the District Court and the Circuit Court of Appeals is correct, then it is manifest that this petition for certiorari should be denied. But if it appears that such reasoning was clearly erroneous and that the decision rendered may be of far reaching consequence, then it seems equally clear that a writ of certiorari should be issued.

With a view to determining the scope of the decision, the opinion rendered by the lower court may be first examined. Under this holding a district court "will not be bound" by such a statute as section 1624 (Cal. Civil Code). The court does not hold that a contract within the terms of that section is valid—neither does it hold such a contract invalid. It merely classifies together statutes of limitation and statutes of frauds and states that it will not be "bound" by them. In other words the court in effect clearly enunciates the principle that sometimes it may hold valid (to wit, enforce) an oral contract not to be performed within a year, and sometimes it may hold such a contract invalid. Thus the validity of such a contract will be settled not under any established principles of law, but merely in accordance with the purely discretionary attitude of the court in each case before it. In rendering the foregoing decision your petitioner respectfully contends that the District Court erred.

The Circuit Court of Appeals in its consideration of the case took a position toward section 1624 (Cal. C. C.) very different from that advanced by the lower court. The upper court held that under the decision of *Workman v. New York City, Mayor, etc.*, 179 U. S. 552, such

a statute as section 1624 is not enforcible in admiralty. Section 1624 merely declares certain enumerated kinds of contracts invalid. If a contract clearly within its scope will not be enforced in admiralty, it is manifest that states have no power, effectually, to declare maritime contracts executed within their borders invalid. If a state cannot declare a maritime contract wholly invalid, it is equally clear that it cannot declare such a contract partially invalid for the greater would necessarily include the less. Not only this, but since statutory violation of maritime contracts perforce involves the invalidity of contracts not executed in conformity to statute, the Circuit Court of Appeals in effect interprets *Workman v. New York City, etc.* (supra), as holding that states are without power to regulate maritime contracts wherever made. In its decision we submit that the Circuit Court of Appeals erred.

III.

No case has been found in which the question of the application of a state statute of frauds in admiralty has been raised. Unless reversed, the present case of *Union Fish Co. v. Erickson,* 235 Fed. 385, is the leading case and determines the law to be that a state statute of frauds will not be enforced by the United States courts sitting in admiralty. Unless reversed, the same case will be controlling authority for the principle that a state statute declaring maritime contracts invalid or even regulating them, will be disregarded in admiralty. The same opinion, unless modi-

fied, establishes the case of *Workman v. City of New York, Mayor, etc.*, 179 U. S. 552, as authority for the principle that states are powerless to make invalid by statute maritime contracts executed within their confines.

Such a complete lack of power on the part of the states has been heretofore entirely unsuspected. Since the earliest times states have enacted laws regulating contracts maritime in their nature. Hundreds of statutes have been passed dealing with charters, contracts of affreightment, pilotage agreements, marine insurance policies, etc. No one has ever questioned the power of the state to pass such laws. Whole chapters of the Civil Code of California are devoted to the regulation of maritime contracts. The state and federal courts have applied the statutes without one suggestion that they were invalid.

The Circuit Court of Appeals now holds that under the decision of the Supreme Court in *Workman v. City of New York, Mayor, etc.*, supra, a state has no power to declare a maritime contract invalid. The invalidity of scores of long enacted statutes is patent. The law of ships, or marine insurance, of stevedoring and all other maritime subjects is thrown into the greatest confusion. And this is because of an unusual and we believe unwarranted construction of an opinion of the Supreme Court of the United States.

Wherefore, your petitioner respectfully prays that a writ of certiorari may be issued out of and under the seal of this court, directed to the United States Circuit Court of Appeals for the Ninth Circuit, com-

manding the said court to certify and send to this court, on a day certain to be therein designated, a full and complete transcript of the record and all proceedings of the said Circuit Court of Appeals in the said cause therein, entitled Union Fish Company, a corporation, Appellant, v. John W. Erickson, Appellee, No. 2680, to the end that the said cause may be reviewed and determined by this court as provided in section 240 of the Act of Congress approved March 3, 1911, and that your petitioner may have such other or further relief or remedy in the premises as this court may deem appropriate and in conformity with said Act, and that the said judgment of the said Circuit Court of Appeals in the said cause and every part thereof may be reversed by this Honorable Court.

And your petitioner will ever pray.

Dated, San Francisco,
November 18, 1916.

UNION FISH COMPANY,
Petitioner.
By J. W. Pew, Its President.

G. S. ARNOLD,
THOMAS A. THACHER,
DENMAN & ARNOLD,
Proctors for Petitioner.

State of California,
City and County of San Francisco.—ss.

J. W. Pew, being first duly sworn, deposes and says:

That he is president of Union Fish Company, the above named petitioner, and is authorized to make and verify the foregoing petition on behalf of said petitioner; that he has read the foregoing petition and knows the contents thereof, and that what is therein stated he believes to be true, that said petition is presented to this Honorable Court in good faith, and not for any purpose of delay.

J. W. PEW.

Subscribed and sworn to before me this 14 day of November, 1916.

(Seal) WM. D. PAGE,
Notary Public in and for the City and County of San Francisco, State of California.

CERTIFICATE OF COUNSEL.

I hereby certify that I have examined the foregoing petition, and that in my opinion the petition is well founded as to matters of fact and as to matters of law, and that the case referred to therein, and for a review of which the petition is filed, is such that the prayer of the petitioner should be granted by this Honorable Court.

Dated, San Francisco,
November 18, 1916.

G. S. ARNOLD,
Proctor for Petitioner.

To John W. Erickson, respondent in the above entitled proceeding; and to F. R. Wall, Esq., proctor for said respondent:

You, and each of you, are hereby given notice that on the third Monday in December next, to wit, on the 18th day of December, 1916, and at the courtroom of the Supreme Court of the United States, situate in the Capitol Building, at the City of Washington, D. C., and when said court opens for the transaction of its business on said day, or so soon thereafter as counsel in such matter can be heard, the foregoing petition will by counsel for petitioner be presented to said court for its consideration, and a motion then made that the prayer of said petition be granted.

Dated, San Francisco,
November 18, 1916.

G. S. Arnold,
Proctor for Petitioner.

In the Supreme Court
OF THE
United States

Union Fish Company (a corporation),
Petitioner,

vs.

James W. Emerson,
Respondent.

BRIEF ON
BEHALF OF PETITIONER, UNION FISH COMPANY.

For Writ of Certiorari from the Supreme Court of the United States to the United States Circuit Court of Appeals for the Ninth Circuit.

G. H. Atkinson,
Thomas J. Tannahill,
Solicitors & Counsel
for Petitioner.

No.

In the Supreme Court

OF THE

United States

UNION FISH COMPANY (a corporation),
Petitioner,

vs.

JOHN W. ERICKSON,
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I.

THE STATUTES OF CALIFORNIA MAKE THE CONTRACT ENFORCED BY THE LOWER COURTS INVALID—NOT MERELY UNENFORCEABLE. THE ONLY QUESTION BEFORE THE LOWER COURTS WAS THEREFORE: CAN A STATE MAKE A MARITIME CONTRACT ENTERED INTO WITHIN IT INVALID?

In the petition for a writ of certiorari filed with this brief, the facts involved in this case are brought out.

It is there made clear that the contract sued upon was, by its own terms, within the scope of Section 1624 of the California Civil Code and that both the Circuit Court of Appeals and the District Court viewed it as such.

Inasmuch as the District Court in its opinion referred to the above section as a Statute of Frauds and seemed to classify together all statutes of frauds, it seems advisable to examine the particular code provision in question, with a view to determining just what effect it has upon contracts within the scope of its provisions.

The Civil Code of California reads, in part:

> "§ 1624. The following contracts are invalid, unless the same, or some note or memorandum thereof, is in writing and subscribed by the party to be charged, or by his agent:
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> 1. An agreement that by its terms is not to be performed within a year from the making thereof;"

This section while unquestionably suggested by the original Statute of Frauds (29 Charles II, c. 3, par. 4) is not copied from it but is phrased in distinctly different language.

The paragraph of the original statute corresponding to the section of the California law reads:

> "No action shall be brought * * * (5) or upon any agreement that is not to be performed within the space of one year from the making thereof; unless the memorandum upon which such action shall be brought, or some memorandum or note thereof shall be in writing and signed by the party to be charged therewith or some other person thereunto by him lawfully authorized."
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Thus an action could not be brought under the statute of Charles II, upon a two-year oral contract, while in California such a contract is made invalid.

The distinction between two such statutes is clear—one referred only to the procedure while the other destroyed the validity of certain contracts made in a certain way.* This was early recognized.

In 1852 Jervis, C. J., discussed section 4 in the following language:

> "The statute in this part of it does not say that unless those requisites are complied with the contract shall be void, but merely that no action shall be brought upon it. * * * The fourth section relates only to the procedure and not to the right and validity of the contract itself."
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> *Leroux v. Brown*, 12 C. B. 801.**

In the consideration of the enforcibility of oral contracts made outside the jurisdiction, the language of the Statute of Frauds applicable has been all important.

Where the statute effects the remedy by declaring that no action shall be brought upon certain oral contracts, then suit may not be brought in that jurisdiction although the contracts are absolutely valid where made.

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On the other hand, if such contracts are made void in a state, contracts made in other states and valid where

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made, may be enforced in the first state although if made there they would have been void.

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These cases are merely in accordance with the general rule declaring:

> "Matters bearing upon the execution, the interpretation and the validity of a contract are determined by the law of the place where the contract is made. Matters connected with its performance are regulated by the law prevailing at the place of performance. Matters respecting the remedy, such as the bringing of suits, admissibility of evidence, statutes of limitation, depend upon the law of the place where the suit is brought."
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R. C. Minor, in his authoritative work on the "Conflict of Laws" has summarized the general rule in the following manner:

> "If it is alleged that the contract is void, because not in writing, it is a question of the formal validity of the contract, to be determined by the *lex loci celebrations.*" (Section 173.)
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> "But if by the 'proper law' of the oral contract it is provided that 'no action shall be brought' thereon unless it be in writing, while the *lex fori* does not require it to be in writing, obviously the *lex fori* does not raise any question of the impairment of the obligation of the contract. On the contrary, it enforces the obligation to a greater extent than would the 'proper law' of the contract. In this case, therefore, the matter is one pertaining to the remedy, to be controlled by the *lex fori.*" (Section 210.)

The state statute therefore made the agreement found between respondent and appellant invalid. Under estab-

lished principles of law it could not be enforced in any other state whatever the laws of that state in regard to oral contracts might have been. It could not be enforced because the *lex loci contractus* determines the validity of every contract and under the provisions of the *lex loci contractus* such a contract was expressly declared invalid.

The lower courts were forced either to consider the contract invalid and refuse to enforce it, or to hold that a state statute declaring maritime contracts invalid would be disregarded in a court of admiralty. The District Court and the Circuit Court of Appeals took the latter course and, unless a writ of certiorari is issued in this case, it is the law that states are powerless effectually to declare any maritime contracts, wherever executed, invalid.

II.

THE DECISION IN THE CASE OF WORKMAN V. CITY OF NEW YORK, MAYOR, ETC., 179 U. S. 552, WAS NOT REVOLUTIONARY. IT MERELY APPLIED WELL SETTLED PRINCIPLES AND HELD THAT IN ADMIRALTY, AS IN EQUITY, THE FEDERAL COURTS WILL NOT BE BOUND BY DECISIONS OF STATE COURTS.

The Circuit Court of Appeals, in sustaining the contract involved in this case, rested its decision upon the opinion rendered by the Supreme Court in *Workman v. City of New York, Mayor, etc.*, 179 U. S. 552. The Circuit Court of Appeals evidently thought that the portion it quoted from the opinion in that case estab-

lished the principle that state statutes declaring maritime contracts invalid are ineffective in courts of admiralty. It is our belief that the opinion in the *Workman* case was not so radical that it took from the states powers long recognized by the courts. The decision seems clearly a mere application of well recognized rules of law. This fact becomes apparent from a close examination of the opinion.

The *Workman* case had under consideration the question of the liability of a city for injury to a vessel by a fireboat owned by the city and in the custody and management of its fire department. The collision was caused by the negligent handling of the fireboat while hastening to assist in putting out a fire raging at the head of a dock. The District Court, on the assumption that the local law controlled, determined that by that law, as declared by decisions of the courts of the State of New York, the city was liable for the injury caused by the negligent management of its fireboat (63 Fed. 298). The decision of the lower court was reversed by the Circuit Court of Appeals (67 Fed. 347) and the case came before the Supreme Court on a writ of certiorari. By a bare majority the court held the city liable upon the ground that the maritime and not the local law governed the determination of the liability.

It must primarily be carried in mind that the action involved a tort and not a contract, and that the state "law" overridden was simply the common law principles laid down in the state courts. And, as before stated, so close were the state court decisions that

Brown, D. J., a most able judge, held that under them the city was liable.

The limited extent of the decision is shown clearly by the much quoted statement in the opinion:

> "The decisions of this court overthrow the assumption that the local law or decisions of a state can deprive of all rights to relief, in a case where redress is afforded by the maritime law, and is sought to be availed of in a cause of action maritime in its nature and depending in a court of admiralty of the United States" (page 560).

The "decisions" referred to as the basis of the opinion make it evident that no new doctrine was meant to be established. Admittedly no state statute can regulate the jurisdiction or practice of the United States courts (*The Lottawanna*, 21 Wall. 558).* For instance, the federal courts in admiralty are not governed by the state statutes of limitation (*The Key City*, 14 Wall.

*The attitude of the courts toward encroachment on federal equity jurisdiction has been as marked as their holdings as to the invalidity of the federal admiralty jurisdiction.

"We have repeatedly held 'that the jurisdiction of the courts of the United States over controversies between citizens of different states, cannot be impaired by the laws of the states, which prescribe the modes of redress in their courts, or which regulate the distribution of their judicial power.' Hyde v. Stone, 20 How. 175; Suydam v. Broadnax, 14 Pet. 67; Union Bank v. Jolly's Administratrix, 18 How. 503. If legal remedies are sometimes modified to suit the changes in the laws of the states, and the practice of their courts, it is not so with equitable. The equity jurisdiction conferred on the federal courts is the same that the High Court of Chancery in England possesses, is subject to neither limitation nor restraint by state legislation, and is uniform throughout the different states of the Union."

Payne v. Hook, 7 Wall. 425, 430.

This is exactly the same position that has been taken toward admiralty.

"As the constitution extends the judicial power of the United States to 'all cases of admiralty and maritime jurisdiction' and as this jurisdiction is held to be exclusive, the power of legislation on the same subject must necessarily be in the national legislature and not in the state legislatures."

Butler v. Boston and S. S.S. Co., 130 U. S. 527, 557.

653).* A state cannot affect the application of the Limited Liability Act in admiralty (*Butler v. Boston and S. S.S. Co.*, 130 U. S. 527).** Contributory negligence does not wholly bar recovery in admiralty (*The S.S. "Max Morris"*, 137 U. S. 1).*** In *The J. E. Rumbell* it was held merely that the admiralty court would determine the priority of maritime liens upon maritime principles (148 U. S. 1).

All these cases cited in the *Workman* opinion are cases of procedure or jurisdiction. They do not pass upon the validity of any contract enforced in admiralty

*The federal courts in admiralty and in equity have the same attitude toward limitation statutes. Referring to maritime liens the Supreme Court declared in *The Steamboat Key City:*

"While the courts of admiralty are not governed in such cases by any Statute of Limitations, they adopt the principle that laches or delay in the judicial enforcement of maritime liens will, under proper circumstances, constitute a valid defense."

The Steamboat Key City, 14 Wall. 653, 660.

"In equity cases the federal courts are not bound by the Statute of Limitations. In those courts the question of laches is paramount, though they will act, or refuse to act, in analogy to such statute."

Sullivan v. Ellis, 219 Fed. 694, 698 (C. C. A. 8th Cir. 1915).

**As pointed out in *The Lottawanna*, 21 Wall. 558, the constitutionality of the Limited Liability Act was sustained not as within the power of congress under the admiralty clause but as being within the commerce clause. Indeed the decision in which the validity of the statute was upheld declared:

"There is not here as in Allen v. Newberry, 21 How. 244, a question of admiralty jurisdiction under the law of 1845 (5 Stat. at p. 726), but of the power of Congress over the commerce of the United States."

Lord v. S.S. Co., 102 U. S. 541, 545.

As a valid act under the commerce clause no state legislation could limit its operation. This is equally true of any valid federal act which regulates commerce such as the Federal Employers Liability Act of April 22, 1909. *Seaboard Air Line Ry. Co. v. Horton*, 233 U. S. 492, 501.

***"In the absence of statutory regulation, the fellow servant rule and its interpretation becomes a matter of general law as to which the federal courts apply their own rules of decision; and the status of Wallace as to being a vice principal or a mere fellow servant is to be determined in this case by the decisions of the federal courts rather than those of Mississippi B. & O. R. R. Co. v. Baugh, 149 U. S. 368."

Moss v. Gulf Compress Co., 202 Fed. 657, 661 (C. C. A. 5th Cir. 1913).

but are concerned only with the powers of the states to regulate the admiralty courts. Naturally the states have no such power or the federal jurisdiction in admiralty would be carried on subject to the approval of the states.

The only case cited by the Supreme Court in support of the above quotation, and which seems to affect the court in admiralty in considering a matter of right as distinguished from jurisdiction or procedure, is *Liverpool & G. W. Steam Co. v. Phoenix Ins. Co.*, 129 U. S. 397, 443. Here the validity of a contract was under consideration. The court said, in part:

> "It was argued for the appellant that the law of New York, the *lex loci contractus*, was settled by recent decisions of the Court of Appeals of that state in favor of the right of a carrier of goods or passengers, by land or water, to stipulate for exemption from all liability for his own negligence." (Cases cited.)
>
> "But on this subject as in any question depending upon mercantile law and not upon local statute or usage, it is well settled that the courts of the United States are not bound by decisions of the courts of the state, but will exercise their own judgment, even when their jurisdiction attaches only by reason of the citizenship of the parties, in an action at law of which the courts of the state have concurrent jurisdiction, and upon a contract made and to be performed within the state. (Cases cited.) The decisions of the state courts certainly cannot be allowed any greater weight in the federal courts when exercising the admiralty and maritime jurisdiction exclusively vested in them by the Constitution of the United States."

The rule that the federal courts are not bound by decisions of state courts upon questions of general

jurisprudence or general commercial law has always been recognized (*11 Cyc.* 901). As stated in the quotation above, this principle applies only to state court decisions and does not apply to statutes. But if a state legislates regarding a matter of general commercial law, the federal courts necessarily are bound by the statute enacted.*

When, therefore, we examine the principles of the *Workman* case in the light of the decisions upon which it admittedly rests, we find no extreme holding—no seizure of power for the admiralty courts. It is simply an application of a recognized legal principle. And this principle is that no state, by statute or otherwise, can infringe upon the jurisdiction or the procedure of admiralty—and that in cases of maritime law the admiralty courts will not be bound by the decisions of the state courts. It is true that this opinion like many others contains certain expressions which, if torn from the context, seem almost revolutionary. But when considered with the context of the decision, it is seen that their radical aspects have been a pure illusion.

In the consideration of the facts here involved, the *Workman* case gives us no assistance. We are not considering a problem of procedure or of jurisdiction. No

*The effect of state statutes is particularly well brought out by the courts in their consideration of negotiable instruments.

"The notes are undoubtedly Kansas contracts; and while we are not bound to follow the view expressed by the highest tribunal of the state upon general principles of the common law merchant (Oats v. National Bank, 100 U. S. 239; R. R. Co. v. National Bank, 102 U. S. 14; Dygert v. Vermont Loan & Trust Co., 94 Fed. 913; Northern Nat. Bank v. Hoopes, 98 Fed. 935; Phipps v. Harding, 70 Fed. 471), *when, however, a state has adopted a negotiable instrument law by statute, we must give force and effect to such law in all cases where the same is applicable.*"

Smith v. Nelson Land & Cattle Co., 212 Fed. 56, 59.

conflict of decisions between the admiralty and the state courts was sought to be reconciled.

There was one question before the lower courts and only one—Is a state powerless to declare invalid by statute contracts executed within it when those contracts are maritime in their nature?

This question the case of *Workman v. New York City, Mayor, etc.*, did not decide.

III.

CONTRARY TO THE PLAIN MEANING OF THE WORDS OF THE CONSTITUTION AND TO THE OPINIONS OF THE COURTS, IT IS PROPOSED TO THROW THE MARITIME LAW IN THIS COUNTRY INTO CHAOS BY HOLDING THAT CONGRESS HAS EXCLUSIVE AND ENTIRE RIGHT TO REGULATE MARITIME CONTRACTS.

Unfortified by the *Workman* case, with its face set against the plain meaning of the words of the Constitution, the Circuit Court of Appeals has held that states have no power over maritime contracts, and by so doing has attempted to plant federal sovereignty over a new domain and to seize from the states a power heretofore unquestioned. By making this holding, the court has in effect read into section 8, article I of the Constitution, the words: "The Congress shall have power * * * to regulate maritime contracts." But the court has gone even farther than this. In the construction of the powers granted to Congress in the above section, it

has been held, that where state statutes affecting interstate commerce are local in their nature, and where Congress has not acted, the statutes are valid. But to sustain the contract in the present case, the court has held that all state statutes invalidating maritime contracts are deemed void in admiralty—regardless of whether or not Congress has legislated on the subject.

In the petition for a writ of certiorari filed herein it was pointed out that removal from the states of their right to declare maritime contracts invalid as a natural result would leave them powerless to regulate maritime contracts. Such a decision is contrary to the whole spirit shown heretofore by the Supreme Court toward regulation of maritime matters.*** While the Supreme Court has again and again declared in admiralty, as in equity, that no state could infringe upon the jurisdiction of the federal court, no implication ever was made that under the judicial section of the Constitution, power to regulate rights—power to regulate maritime

***To take away the power of a state to regulate maritime contracts seems a clear denial of the principle stated by the Supreme Court in enforcing in admiralty a state pilotage statute:

> "It is urged further that a state law could not give jurisdiction to the District Court. That is true. A state law cannot give jurisdiction to any federal court, but that is not a question in this case. A state law may give a substantial right of such a character that where there is no impediment arising from the residence of the parties, the right may be enforced in a proper federal tribunal whether it be a court of equity, of admiralty or of common law. The statute in such cases does not confer the jurisdiction. That exists already, and it is invoked to give effect to the right by applying the appropriate remedy. This principle may be laid down as axiomatic in our national jurisprudence. A party forfeits nothing by going into a federal tribunal. **Jurisdiction having attached, his case is tried there upon the same principles, and its determination is governed by the same considerations, as if it had been brought in the proper state tribunal** of the same locality."
>
> *Ex parte McNeil*, 13 Wall. 236, 243.

contracts—was taken from the states.* Indeed the regulation of maritime matters by Congress was carefully sustained by the Supreme Court as an exercise of its authority under the commerce clause.** If, under the judicial section of the Constitution, power to regulate maritime contracts is taken from the states, the court may equally well hold that under the same section all power to legislate upon contracts between citizens of different states is removed from the individual states and conferred upon the federal government alone.***

*Quite the reverse in the case of *The Hamilton*, the Supreme Court squarely held that in the admiralty a state statute conveying a right would be enforced.

"We pass to the other branch of the first question,—whether the state law, being valid, will be applied in admiralty. Being valid, it created an obligation—a personal liability of the owner of the Hamilton to the claimants. (Slater v. Mexican R. R. Co., 194 U. S. 120, 126.) This, of course, the admiralty would not disregard but would respect the right when brought before it in any legitimate way. Ex parte McNeil, 13 Wall. 236, 243."

The Hamilton, 207 U. S. 398, 405.

This case is simply in accord with the decisions holding that a state statute giving a right clearly within admiralty jurisdiction will be enforced in admiralty. Instances of such rights created by states are the statutes giving rights arising out of death by wrongful act. See *The Harrisburg*, 119 U. S. 199. So also with state statutes creating liens for supplies furnished domestic vessels (*Rodd v. Heartt*, 21 Wall. 558). Similarly a state statute giving a new equitable remedy will be enforced in the federal courts in equity (*Reynolds v. Crawfordsville Bank*, 112 U. S. 405.

**"The scope of the maritime law, and that of commercial regulation is not coterminous, it is true, but the latter embraces much the largest portion of the ground covered by the former. Under it Congress has regulated the registry, enrollment, license and nationality of ships and vessels; the mode of recording bills of sale and mortgages thereon; the rights and duties of seamen; the limitations of the responsibility of shipowners for the negligence and misconduct of their captains and crews, and many other things of a character truly maritime."

The Lottawanna, 21 Wall. 558, 577.

***As has been pointed out in the foot notes the courts have gone no further in making clear the inviolability of admiralty than they have of federal equity jurisdiction. Yet courts of equity constantly enforce state Statutes of Frauds. See such cases as *Kennedy v. Bates*, 142 Fed. 51; *Horton v. Stegmeyer*, 175 Fed. 756; *Ducie v. Ford*, 138 U. S. 587. Can any one imagine the claim that state statutes making contracts invalid need not be considered by the federal courts sitting in equity?

Rarely does a case present a pure problem of law as does the action now under consideration. The question of law stands out completely stripped of all considerations of fact. In future the decision rendered by the Circuit Court of Appeals, and reported at 235 Fed. 385, cannot be distinguished by any allusion to the facts. The facts are not involved. Unless reversed, the opinion will become a leading case. If a writ of certiorari is not issued, then states have practically no power over maritime contracts. The former functions of the state will be henceforth regulated solely by the federal government. A great step will have been taken in tearing down the power of the state and in building up that of the nation.

Whether or not the law is to become thoroughly hostile to the theories of the state, once acknowledged in this country, we do not know. But we are confident that, before determining that the power of the federal government is so great and that of the state so limited, it will be well for the future of American jurisprudence, that further consideration be given to the advisability of such a revolutionary change in the constitutional law of the United States.

We respectfully submit that the prayer of our petition should be granted.

Dated, San Francisco,
November 18, 1916.

G. S. Arnold,
Thomas A. Thacher,
Denman & Arnold,
Proctors for Petitioner.

[redacted]

In the

Supreme Court

of the

United States

October Term, 19[redacted]

No. [redacted]

Union Trust Company (a corporation),

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vs.

John W. [redacted],

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PETITION FOR WRIT OF CERTIORARI

[redacted]

Proctor for Petitioner.

William Denman,
Denman and Arnold,
Of Counsel.

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October Term, 1917

No. 326

Union Fish Company (a corporation),
Petitioner,

vs.

John W. Erickson,
Respondent.

PETITIONER'S OPENING BRIEF.

Statement.

The libel in this action set forth that during the month of May, 1914, at San Francisco, California, the libelant and respondent entered into an oral contract, whereby it was agreed that the libelant should proceed to Pirate Cove, Alaska, and, after arriving at that place, serve for a period of not less than one year as master of the schooner "Martha", and perform certain other duties, for a stipulated compensation. The libel further stated that, in accordance with said oral agreement, the libelant proceeded to Pirate Cove,

Alaska, and performed the duties for which he was obligated, until July 18th, 1914, when he was wrongfully discharged by the respondent. This discharge was claimed to constitute a breach of said contract, and libelant prayed damages therefor.

Exceptions to the libel were filed, upon the ground that the oral agreement was void under Subdivision 1 of Section 1624 of the Civil Code of California (Statute of Frauds). The exceptions were overruled and the respondent thereupon answered.

The answer denied that the agreement was as alleged in the libel and further set forth that the libelant was discharged by reason of his inefficiency, carelessness and unsatisfactory conduct.

The lower court found that, under the oral contract made in May, 1914, at San Francisco, California, the libelant was hired by respondent for a year from June 12th, 1914, and that libelant was discharged by respondent without cause on July 18th, 1914.

From the decree an appeal was taken to the Circuit Court of Appeals. Before that court, inter alia, it was argued that the agreement was void under the above-mentioned Section 1624 of the Civil Code of California. The judgment of the lower court was affirmed.

A petition for rehearing in the Circuit Court of Appeals was then filed in which it was argued solely that the agreement was void under the California statute mentioned. This petition was denied.

The only question to be presented before this court is, whether a maritime contract made orally in California, which by its terms is not to be performed within a year from the making thereof, is enforcible in the United States court in admiralty.

Argument.

I.

THE STATUTES OF CALIFORNIA MAKE THE CONTRACT ENFORCED BY THE LOWER COURTS INVALID—NOT MERELY UNENFORCIBLE. THE ONLY QUESTION BEFORE THE LOWER COURTS WAS THEREFORE: CAN A STATE MAKE A MARITIME CONTRACT ENTERED INTO WITHIN IT INVALID?

Inasmuch as the District Court in its opinion referred to the above section as a Statute of Frauds and seemed to classify together all statutes of frauds, it seems advisable to examine the particular code provision in question, with a view to determining just what effect it has upon contracts within the scope of its provisions.

The Civil Code of California reads, in part:

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The distinction between two such statutes is clear—one referred only to the procedure while the other destroyed the validity of certain contracts made in a certain way.* This was early recognized.

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The lower courts were forced either to consider the contract invalid and refuse to enforce it, or to hold that a state statute declaring maritime contracts invalid would be disregarded in a court of admiralty. The District Court and the Circuit Court of Appeals took the latter course. If this stand is sustained the law of the United States hereafter will be that states are powerless effectually to regulate or declare invalid any contracts wherever executed, if such contracts be maritime in their nature.

II.

THE DECISION IN THE CASE OF WORKMAN V. CITY OF NEW YORK, MAYOR, ETC., 179 U. S. 552, WAS NOT REVOLUTIONARY. IT MERELY APPLIED WELL SETTLED PRINCIPLES AND HELD THAT IN ADMIRALTY, AS IN EQUITY, THE FEDERAL COURTS WILL NOT BE BOUND BY DECISIONS OF STATE COURTS.

The Circuit Court of Appeals, in sustaining the contract involved in this case, rested its decision upon the opinion rendered by the Supreme Court in *Workman v. City of New York, Mayor, etc.,* 179, U. S. 552. The Circuit Court of Appeals evidently thought that the portion it quoted from the opinion in that case established the principle that state statutes declaring maritime contracts invalid are ineffective in courts of admiralty. It is our belief that the opinion in the *Workman* case was not so radical that it took from the states powers long recognized by the courts. The decision seems clearly a mere application of well recognized rules of law. This fact becomes apparent from a close examination of the opinion.

The *Workman* case had under consideration the question of the liability of a city for injury to a vessel by a fireboat owned by the city and in the custody and management of its fire department. The collision was caused by the negligent handling of the fireboat while hastening to assist in putting out a fire raging at the head of a dock. The District Court, on the assumption that the local law controlled, determined that by that law, as declared by decisions of the courts of the State

of New York, the city was liable for the injury caused by the negligent management of its fireboat (63 Fed. 298). The decision of the lower court was reversed by the Circuit Court of Appeals (67 Fed. 347) and the case came before the Supreme Court on a writ of certiorari. By a bare majority the court held the city liable upon the ground that the maritime and not the local law governed the determination of the liability.

It must primarily be carried in mind that the action involved a tort and not a contract, and that the state "law" overridden was simply the common law principles laid down in the state courts. And, as before stated, so close were the state court decisions that Brown, D. J., a most able judge, held that under them the city was liable.

The limited extent of the decision is shown clearly by the much quoted statement in the opinion:

> "The decisions of this court overthrow the assumption that the local law or decisions of a state can deprive of all rights to relief, in a case where redress is afforded by the maritime law, and is sought to be availed of in a cause of action maritime in its nature and depending in a court of admiralty of the United States" (page 560).

The *decisions* referred to as the basis of the opinion make it evident that no new doctrine was meant to be established. Admittedly no state statute can regulate the jurisdiction or practice of the United States

courts (*The Lottawanna*, 21 Wall. 558).* For instance, the federal courts in admiralty are not governed by the state statutes of limitation (*The Key City*, 14 Wall. 653).† A state cannot affect the application of the Limited Liability Act in admiralty (*Butler v. Boston and S. S.S. Co.*, 130 U. S. 527).‡ Contributory negli-

*The attitude of the courts toward encroachment on federal equity jurisdiction has been as marked as their holdings as to the invalidity of the federal admiralty jurisdiction.

"We have repeatedly held 'that the jurisdiction of the courts of the United States over controversies between citizens of different states, cannot be impaired by the laws of the states, which prescribe the modes of redress in their courts, or which regulate the distribution of their judicial power.' Hyde v. Stone, 20 How. 175; Suydam v. Broadnax, 14 Pet. 67; Union Bank v. Jolly's Administratrix, 18 How. 503. If legal remedies are sometimes modified to suit the changes in the laws of the states, and the practice of their courts, it is not so with equitable. The equity jurisdiction conferred on the federal courts is the same that the High Court of Chancery in England possesses, is subject to neither limitation nor restraint by state legislation, and is uniform throughout the different states of the Union."

Payne v. Hook, 7 Wall. 425, 430.

This is exactly the same position that has been taken toward admiralty.

"As the constitution extends the judicial power of the United States to 'all cases of admiralty and maritime jurisdiction' and as this jurisdiction is held to be exclusive, the power of legislation on the same subject must necessarily be in the national legislature and not in the state legislatures."

Butler v. Boston and S. S.S. Co., 130 U. S. 527, 557.

†The federal courts in admiralty and in equity have the same attitude toward limitation statutes. Referring to maritime liens the Supreme Court declared in *The Steamboat Key City:*

"While the courts of admiralty are not governed in such cases by any Statute of Limitations, they adopt the principle that laches or delay in the judicial enforcement of maritime liens will, under proper circumstances, constitute a valid defense."

The Steamboat Key City, 14 Wall. 653, 660.

"In equity cases the federal courts are not bound by the Statute of Limitations. In those courts the question of laches is paramount, though they will act, or refuse to act, in analogy to such statute."

Sullivan v. Ellis, 219 Fed. 694, 698 (C. C. A. 8th Cir. 1915).

‡As pointed out in *The Lottawanna*, 21 Wall. 558, the constitutionality of the Limited Liability Act was sustained not as within the power of congress under the admiralty clause but as being within the commerce clause. Indeed the decision in which the validity of the statute was upheld declared:

"There is not here as in Allen v. Newberry, 21 How. 244, a question of admiralty jurisdiction under the law of 1845 (5 Stat. at

gence does not wholly bar recovery in admiralty (*The S.S. "Max Morris"*, 137 U. S. 1).* In *The J. E. Rumbell* it was held merely that the admiralty court would determine the priority of maritime liens upon maritime principles (148 U. S. 1).

All these cases cited in the *Workman* opinion are cases of procedure or jurisdiction. They do not pass upon the validity of any contract enforced in admiralty but are concerned only with the powers of the states to regulate the admiralty courts. Naturally the states have no such power or the federal jurisdiction in admiralty would be carried on subject to the approval of the states.

The only case cited by the Supreme Court in support of the above quotation, and which seems to affect the court in admiralty in considering a matter of right as distinguished from jurisdiction or procedure, is *Liverpool & G. W. Steam Co. v. Phoenix Ins. Co.*, 129 U. S. 397, 443. Here the validity of a contract was under consideration. The court said, in part:

> "It was argued for the appellant that the law of New York, the *lex loci contractus*, was settled

p. 726), but of the power of Congress over the commerce of the United States."

Lord v. S.S. Co., 102 U. S. 541, 545.

As a valid act under the commerce clause no state legislation could limit its operation. This is equally true of any valid federal act which regulates commerce such as the Federal Employers Liability Act of April 22, 1909. *Seaboard Air Line Ry. Co. v. Horton*, 233 U. S. 492, 501.

*"In the absence of statutory regulation, the fellow servant rule and its interpretation becomes a matter of general law as to which the federal courts apply their own rules of decision; and the status of Wallace as to being a vice principal or a mere fellow servant is to be determined in this case by the decisions of the federal courts rather than those of Mississippi B. & O. R. R. Co. v. Baugh, 149 U. S. 368."

Moss v. Gulf Compress Co., 202 Fed. 657, 661 (C. C. A. 5th Cir. 1913).

by recent decisions of the Court of Appeals of that state in favor of the right of a carrier of goods or passengers, by land or water, to stipulate for exemption from all liability for his own negligence." (Cases cited.)

"But on this subject as in any question depending upon mercantile law and not upon local statute or usage, it is well settled that the courts of the United States are not bound by decisions of the courts of the state, but will exercise their own judgment, even when their jurisdiction attaches only by reason of the citizenship of the parties, in an action at law of which the courts of the state have concurrent jurisdiction, and upon a contract made and to be performed within the state. (Cases cited.) The decisions of the state courts certainly cannot be allowed any greater weight in the federal courts when exercising the admiralty and maritime jurisdiction exclusively vested in them by the Constitution of the United States."

The rule that the federal courts are not bound by decisions of state courts upon questions of general jurisprudence or general commercial law has always been recognized (*11 Cyc.*, 901). As stated in the quotation above, this principle applies only to state court decisions and does not apply to statutes. But if a state legislates regarding a matter of general commercial law, the federal courts necessarily are bound by the statute enacted.*

*The effect of state statutes is particularly well brought out by the courts in their consideration of negotiable instruments.

"The notes are undoubtedly Kansas contracts; and while we are not bound to follow the view expressed by the highest tribunal of the state upon general principles of the common law merchant (Oats v. National Bank, 100 U. S. 239; R. R. Co. v. National Bank, 102 U. S. 14; Dygert v. Vermont Loan & Trust Co., 94 Fed. 913; Northern Nat. Bank v. Hoopes, 98 Fed. 935; Phipps v. Harding, 70 Fed. 471), *when, however, a state has adopted a negotiable instrument law by statute, we must give force and effect to such law in all cases where the same is applicable.*"

Smith v. Nelson Land & Cattle Co., 212 Fed. 56, 59.

When, therefore, we examine the principles of the *Workman* case in the light of the decisions upon which it admittedly rests, we find no extreme holding—no seizure of power for the admiralty courts. It is simply an application of a recognized legal principle. And this principle is that no state, by statute or otherwise, can infringe upon the jurisdiction or the procedure of admiralty—and that in cases of maritime law the admiralty courts will not be bound by the decisions of the state courts. It is true that this opinion like many others contains certain expressions which, if torn from the context, seem almost revolutionary. But when considered with the context of the decision, it is seen that their radical aspects have been a pure illusion.

In the consideration of the facts here involved, the *Workman* case gives us no assistance. We are not considering a problem of procedure or of jurisdiction. No conflict of decisions between the admiralty and the state courts was sought to be reconciled.

There was one question before the lower courts and only one—Is a state powerless to declare invalid by statute contracts executed within it when those contracts are maritime in their nature?

This question the case of *Workman v. New York City, Mayor, etc.*, did not decide.

III.

THE CASE OF SOUTHERN PACIFIC COMPANY V. JENSEN, 244 U. S. 205, IS NOT INCONSISTENT WITH THE POWER OF THE STATE TO REGULATE, IN THE ABSENCE OF LEGISLATION BY CONGRESS, MARITIME CONTRACTS, SO FAR AT LEAST TO PRESCRIBE THE FORMAL REQUIREMENTS NECESSARY TO THE VALIDITY OF SUCH CONTRACTS. THE REASONING OF BOTH THE MAJORITY AND DISSENTING OPINIONS CONFIRM THIS POWER.

In the recently decided case of *Southern Pacific Company v. Jensen,* this court held that the New York Workmen's Compensation Statute, giving a remedy "of a character wholly unknown to the common law, incapable of enforcement by the ordinary processes of any court" is invalid, when applied to a maritime case, under Article 3, Section 2, and Article 1, Section 8, of the Constitution, and U. S. Judicial Code, Sec. 24, 256, at least when the statute is inconsistent with the policy of Congress with reference to maritime matters as manifested by the acts of Congress. The majority opinion of the court states, with regard to the power of the state to legislate in reference to maritime matters:

> "In view of these constitutional provisions and the Federal act it would be difficult, if not impossible, to define with exactness just how far the general maritime laws may be changed, modified, or affected by state legislation. That this may be done to some extent cannot be denied."
>
> *Southern Pacific Co. v. Jensen,* 244 U. S. 205 at 216; 61 Law. Ed. 1098.

The opinion then places the following limitations upon the state's power:

> "And plainly, we think, no such legislation is valid if it contravenes the essential purpose ex-

pressed by an act of Congress, or works material prejudice to the characteristic features of the general maritime law, or interferes with the proper harmony and uniformity of that law in its international and interstate relations. This limitation, at the least, is essential to the effective operations of a fundamental purpose for which such law was incorporated into our national laws by the Constitution itself."

Southern Pacific Co. v. Jensen, 244 U. S. 205 at 216, 61 Law. Ed. 1098.

Obviously none of these limitations affect the California Statute. So far as its application to the present case is concerned, the following quotation from the dissenting opinion of Mr. Justice Pitney does not conflict with the opinion of the majority and would seem to apply with full force to the California statute.

"The doctrine clearly deducible from the cases is that, in matters of commercial law and general jurisprudence, not subject to the authority of Congress, or where Congress has not exercised its authority, and in the absence of state legislation, the Federal courts will exercise an independent judgment and reach a conclusion upon considerations of right and justice generally applicable, the Federal jurisdiction having been established for the very purpose of avoiding the influence of local opinion; but that where the state has legislated, its will, thus declared, is binding, even upon the Federal courts, if it be not inconsistent with the expressed will of Congress respecting a matter that is within its constitutional power. The doctrine concedes as much independence to the courts of the states as it reserves for the courts of the Union. Burgess v. Seligman, 107 U. S. 20, 33, 34, 27 L. ed. 359, 365, 2 Sup. Ct. Rep. 10; East Alabama R. Co. v. Doe, 114 U. S. 340, 353, 29 L. ed. 136, 140, 5 Sup. Ct. Rep. 869; Gibson v. Lyon,

115 U. S. 439, 446, 29 L. ed. 440, 442, 6 Sup. Ct. Rep. 129; Anderson v. Santa Anna, 116 U. S. 356, 362, 29 L. ed. 633, 635, 6 Sup. Ct. Rep. 413; Baltimore & O. R. Co. v. Baugh, 149 U. S. 368, 372, 37 L. ed. 772, 775, 13 Sup. Ct. Rep. 914; Folsom v. Township 96, 159 U. S. 611, 625, 40 L. ed. 278, 283, 16 Sup. Ct. Rep. 174; Stanly County v. Coler, 190 U. S. 437, 444, 47 L. ed. 1126, 1131, 23 Sup. Ct. Rep. 811; Kuhn v. Fairmont Coal Co. 215 U. S. 349, 357, 360, 54 L. ed. 228, 233, 234, 30 Sup. Ct. Rep. 140."

Southern Pacific Co. v. Jensen, 244 U. S. 205, at 249; 61 Law. Ed. 1113.

That the admiralty courts are bound to respect state statutes of the character here involved even in the admiralty courts, had been clearly enunciated some time before in *The Hamilton,* 207 U. S. 398, 405.

"We pass to the other branch of the first question,—whether the state law, being valid, will be applied in admiralty. Being valid, it created an obligation—a personal liability of the owner of 'The Hamilton' to the claimants. (Slater v. Mexican R. R. Co., 194 U. S. 120, 126). This, of course, the admiralty would not disregard but would respect the right when brought before it in any legitimate way. Ex parte McNeil, 13 Wall. 236, 243."

See also

The Harrisburg, 119 U. S. 199;

The Lottawanna, 21 Wall. 558.

IV.

CONTRARY TO THE PLAIN MEANING OF THE WORDS OF THE CONSTITUTION AND TO THE OPINIONS OF THE COURTS, IT IS PROPOSED TO THROW THE MARITIME LAW IN THIS COUNTRY INTO CHAOS BY HOLDING THAT CONGRESS HAS EXCLUSIVE AND ENTIRE RIGHT TO REGULATE MARITIME CONTRACTS.

Unfortified by the *Workman* case, with its face set against the plain meaning of the words of the Constitution and the decisions of this court, the Circuit Court of Appeals has held that states have no power to regulate maritime contracts, and have vested Congress with an embarrassing exclusive authoriy which has never before been suspected. By making this holding the court has done more than to read into article 1, section 8, of the Constitution the words "The Congress shall have power * * * to regulate maritime contracts". For under the similar power expressed in the interstate commerce clause, the Federal courts have always held that where state statutes are local in their nature and Congress has not acted, the statutes are valid and will be enforced in the Federal courts (*Balt. & O. R. Co. v. Baugh*, 149 U. S. 368). But to sustain the present decision, the conclusion must be reached that the power of Congress is *exclusive*, and that all state statutes regulating maritime contracts are void in admiralty.

If the California statute, prescribing the formalities necessary to the validity of a contract executed within its borders, will not be enforced in admiralty it follows that the state is without power effectually to legislate with regard to maritime contracts, at all, since the

statutory regulation of maritime contracts necessarily involves the invalidity of statutes not executed in conformity with the statute. The ruling in the present case not only is wholly contrary to the spirit of the decisions of the Supreme Court, as hitherto shown, but is contrary to the whole history of maritime legislation in the seaboard states, since the beginning of this government.

To take away the power of a state to regulate maritime contracts seems a clear denial of the principle stated by the Supreme Court in enforcing in admiralty a state pilotage statute:

> "It is urged further that a state law could not give jurisdiction to the District Court. That is true. A state law cannot give jurisdiction to any federal court, but that is not a question in this case. A state law may give a substantial right of such a character that where there is no impediment arising from the residence of the parties, the right may be enforced in a proper federal tribunal whether it be a court of equity, of admiralty or of common law. The statute in such cases does not confer the jurisdiction. That exists already, and it is invoked to give effect to the right by applying the appropriate remedy. This principle may be laid down as axiomatic in our national jurisprudence. A party forfeits nothing by going into a federal tribunal. *Jurisdiction having attached, his case is tried there upon the same principles, and its determination is governed by the same considerations, as if it had been brought in the proper state tribunal* of the same locality."
>
> *Ex parte McNeil*, 13 Wall. 236, 243.

While the Supreme Court has again and again held in admiralty as in equity that no state could infringe on the jurisdiction of the Federal courts, no implication

was ever made that under the judicial section of the Constitution Congress was given the exclusive jurisdiction over maritime rights—maritime contracts—or that this power was taken from the states. As well say that under the same article of the Constitution the power to legislate upon matters affecting contracts made between citizens of the several states is taken from the states and vested in the Federal authority alone.

As has been pointed out in the footnotes the courts have gone no further in making clear the inviolability of admiralty than they have of federal equity jurisdiction. Yet courts of equity constantly enforce state Statutes of Frauds. See such cases as *Kennedy v. Bates,* 142 Fed. 51; *Horton v. Stegmeyer,* 175 Fed. 756; *Ducie v. Ford,* 138 U. S. 587. Can anyone imagine the claim that state statutes making contracts invalid need not be considered by the federal courts sitting in equity?

If this California statute is to be ignored by the admiralty courts, what becomes of the hundreds of state statutes framed solely with regard to maritime affairs, and hitherto enforced again and again in courts of admiralty? For if the California statute, prescribing general rules for all contracts, and applying only incidentally to maritime contracts, executed within its borders, infringes upon the judicial section of the Constitution when it is applied to maritime affairs, then so much the more must state statutes directly affecting maritime matters—marine insurance contracts, material men's liens, pilotage and many other subjects—infringe

upon Federal powers. We respectfully submit that this court never intended, in the *Workman* or any other case, to apply so stringent a doctrine upon the powers of the state in maritime affairs, as the Circuit Court of Appeals has applied in this case. Neither can the law be, as might be inferred from the decision of the District Court, that admiralty courts may apply or refuse to apply state statutes as a gratuitous benevolence. If either court was correct, the state hereafter is stripped bare of all powers over maritime contracts.

Dated, San Francisco,
March, 11, 1918.

Respectfully submitted,

G. S. Arnold,
Proctor for Petitioner.

William Denman,
Denman and Arnold,
Of Counsel.

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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1917

No. [redacted]76

UNION FISH COMPANY (a corporation),
Petitioner,

vs.

JOHN W. ERICKSON,
Respondent.

BRIEF FOR RESPONDENT.

CHARLES J. HEGGERTY,
Proctor for Respondent.

F. R. WALL,
Of Counsel.

Table of Cases Cited.

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1917

No. 326

UNION FISH COMPANY (a corporation),
Petitioner,

vs.

JOHN W. ERICKSON,
Respondent.

BRIEF FOR RESPONDENT.

ORAL
A CONTRACT OF HIRING, FOR NOT LESS THAN ONE YEAR, TO SERVE AS MASTER OF A VESSEL IN ALASKAN WATERS, WHICH CONTRACT WAS LAWFUL UNDER THE MARITIME LAW, CANNOT BE DEFEATED, WHEN SUED ON IN THE ADMIRALTY, BY A STATUTE OF THE STATE WHERE SUCH CONTRACT WAS MADE, WHICH STATUTE DECLARES INVALID "AN AGREEMENT THAT BY ITS TERMS IS NOT TO BE PERFORMED WITHIN A YEAR FROM THE MAKING THEREOF".

Petitioner says that the question here is, "Is a state powerless to declare invalid by statute con-

tracts executed within it when those contracts are maritime in their nature?"

Respondent says the question is a much narrower one, and is this:

Can the oral contract of hiring of a person for one year to serve as the master of a vessel in Alaskan waters, which was lawful under the maritime law, and which was partly performed, be defeated, when sued on in the admiralty court, by a statute of California, where such contract was made, which statute declares invalid "An agreement that by its terms is not to be performed within a year from the making thereof"?

So that we are not here concerned with petitioner's broad contention that a state is not in all cases powerless to declare invalid a maritime contract, executed therein; but we do point out, even as to that broad proposition, that this court has recently said

> "No such legislation is valid if it * * * works material prejudice to the characteristic features of the general maritime law, or interferes with the proper harmony and uniformity of that law in its international and interstate relations" (*So. Pac. Co. v. Jensen*, 244 U. S. 216);

and, also:

> "It must now be accepted as settled doctrine that, * * * in the absence of some controlling statute, the general maritime law, as accepted by the Federal courts, constitutes part of our national law, applicable to matters

within the admiralty and maritime jurisdiction" (*Ib.*, 215).

In the well-considered opinion of District Judge Wells, in the case of *Harris et al. v. The Henrietta* (Newb. 284), Fed. Cas. No. 6121, at page 627, he says:

> "By the constitution of the United States, congress has the exclusive right to regulate commerce with foreign nations and among the several states; and the courts of the United States are invested with the admiralty and maritime jurisdiction. The ninth section of the judiciary act of 1789 (1 Stat. 76), declares that this admiralty and maritime jurisdiction is exclusively in the courts of the United States. By the act of congress of May 19, 1828, (4 Stat. 278), entitled 'An act further to regulate process in the courts of the United States', it is provided, 'that proceedings in the courts of admiralty and maritime jurisdiction shall be according to the principles, rules and usages which belong to courts of admiralty, as contradistinguished from those of common law, except so far as may have been otherwise provided for by acts of congress', etc.
>
> "It is obvious, I think, from the above statement, that the admiralty and maritime law of the United States, unless where changed by act of congress, is as much the law of these United States as if it had been formally enacted, word for word, in a statute. The laws of the United States, I need hardly say, 'are the supreme laws', and cannot be changed or altered, modified or repealed by state enactments. Nor can any right or privilege given or secured by them be abrogated, displaced or superseded by such state enactments."

Our duty, then, is to point out that the libelant, under the general maritime law, as accepted by the Federal courts, acquired rights by an oral contract of hiring to go as master of a vessel for not less than one year.

That the contract of the master is a maritime one cannot be disputed. *The Wm. H. Hoag,* 168 U. S. 443.

The master was hired orally long before there were any United States of America. In *Jacobsen's Sea Laws*, an ancient and a most eminent authority, it is said, at page 87:

> "The agreement between the owner and the master is seldom in writing."

And Judge Betts said, in *The Boston,* 1 Blatchf. & H. 309, Fed. Cas. No. 1669, page 921:

> "In some maritime countries on the continent, the mode of a master's appointment is prescribed by law. Jac. Sea Laws, 83, 85, 87. In this country and in England, the law does not interfere in relation to the qualifications or mode of appointment of a master. He is, pro hac vice, the agent of the owner; and any mode of authorization competent to give power to one man to act for and bind another, is sufficient to constitute him master of a ship."

Since Judge Betts' decision the Federal law has been changed to require certain qualifications.

Below we refer to and make extracts from certain cases decided in the lower courts for the purpose of showing that the maritime law was the law

of the hiring; that by that law the contract was lawful, and the libelant acquired rights that he could not be deprived of by any state legislation:

In the case of *Baton Rouge & B. S. Packet Co. et al. v. George*, 128 Fed. 914, one George George was hired as a pilot by the corporation for a year, the master of the vessel doing the hiring orally. There was part performance, and in all other respects the case is on all fours with the one at bar. The conclusion of the trial court, that the contract was binding, was upheld by the C. C. A., 5th Cir., and libelant recovered his damages for its breach.

The case of *The Wanderer*, 20 Fed. 655, was that of a purser who was dicharged without cause before the end of the year for which he was hired. We quote therefrom:

> "The libelant had made a contract of service for one year. He performed part of the contract, and was ready and willing to perform the residue, but was prevented by the master of the vessel, who discharged him without cause. He sues to recover the balance due on his salary for the year. If he performed his duty while in the service of the vessel, and was ready and willing to perform it for the residue of his engagement, and was discharged without due cause, and was unjustifiably prevented from completing his contract, his rights are the same as if he had completed it. He is entitled to his wages for the whole year, and was entitled to sue for them on his discharge. He has been paid a part of his wages, and sues for the balance.

> "In the case of a contract for an ordinary seaman's wages, the lien should not, perhaps, be extended beyond a single voyage, as that is the usual time for which his engagement is made. But the case of a purser stands somewhat on a different footing. His connection with the vessel is generally more permanent than that of a common seaman. He represents to some extent the owners, and his qualifications are of such a character that a competent purser cannot usually be employed for a single trip. We, therefore, do not think an engagement of a purser for a year an unreasonable one, and such an engagement, we think, would be binding on the boat."

And in the case of *The Ira Chaffee*, 2 Fed. 401, the court says:

> "It must now be considered as settled that if the ship enters upon the performance of its work, or any step has been taken toward such performance, the ship becomes pledged to the complete execution of the contract."

> "The propeller, having entered upon the agreement to tow the libelant's barge during the entire season of 1894, is answerable in rem for the breach of the agreement by abandonment of the barge in September." *The Oscoda* 66 Fed. 348.

The case of *Kells v. Boyd*, 31 Fed. 621, was that of a master suing for his wages. It is evident from the report that all of the agreements were oral. The cause was decided by the court on its merits, without regard to the fact that there was no written agreement. *Brennan v. Peter Hagan &*

Co., 147 Fed. 290, was plainly on an oral contract as master for one year, and recovery was allowed. *Parsons v. Terry,* 1 Low. 60, Fed. Cas. No. 10,782, was for breach of contract, and recovery was allowed for the season on which the ship was about to enter when the master was discharged. *Lombard S. S. Co. v. Anderson,* 134 Fed. 569, is also in point. It was a libel for wages by the master of a "tramp" steamer, who sued for his wages from the time he was discharged in Manila, until he returned to New York, the port of his shipment, which wages the court allowed. There was there, evidently, no written agreement, for the court says:

> "The appellee did not prove that he had been employed as master for any particular voyage, nor for any special period of time * * * The owners of the steamship had the right to remove the master at any time, and without assigning any cause, and without being liable for damages, unless they had, by the terms of their contract with him yielded that right, which it seems that they did not do."

In the instant case they did.

The contract in the case of *Chisholm v. The J. L. Pendergast,* 32 Fed. 415, was a contract made in New York to serve as master. Of it Wallace, J., said (p. 416):

> "The contract having been made here, and being one for services to be performed on a vessel which, as between the contracting parties, was an American vessel, has only those incidents which exist by the general maritime law as recognized in this country."

This brings us to consider this question:

BY WHAT LAW IS IT JUST TO PRESUME THAT THE PARTIES HERE SUBMITTED THEMSELVES?

It was particularly a maritime contract to be performed in Alaskan waters; the libelant gave up a good job with the respondent in San Francisco to go to work for it in these out-of-the-way waters (Aps. pp. 84 and 85). It is, therefore, just to presume that both parties submitted themselves to the law that would secure the greatest permanency and would not defeat their arrangements. This court gives ample support for this position. We quote:

> "The law we are in search of, which is to decide upon the nature, interpretation and validity of the engagement in question, is that which the parties have, either expressly or presumptively, incorporated into their contract as constituting its obligation. It has never been better described than it was incidentally by Ch. J. Marshall in Wayman v. Southard, 10 Wheat. 48, where he defined it as a principle of universal law: 'The principle that in every forum a contract is governed by the law with a view to which it was made'. The same idea had been expressed by Lord Mansfield in Robinson v. Bland, 2 Burr. 1077. 'The law of the place,' he said, 'can never be the rule where the transaction is entered into with an express view to the law of another country, as the rule by which it is to be governed'. And in Lloyd v. Guibert, L. R., 1 Q. B. 120, in the Court of Exchequer Chamber, it was said that 'It is necessary to consider by what general law the parties intended that the transaction should be governed, or rather, by what general law it is

just to presume that they have submitted themselves in the matter'. Le Breton v. Miles, 8 Paige 261.

"It is upon this ground that the presumption rests, that the contract is to be performed at the place where it is made, and to be governed by its laws, there being nothing in its terms, or in the explanatory circumstances of its execution inconsistent with that intention.

"So, Phillimore says (4 Int. Law 469): 'It is always to be remembered that in obligations it is the will of the contracting parties, and not the law which fixes the place of fulfillment—whether that place be fixed by *express words* or by *tacit implication*—as the place to the jurisdiction of which the contracting parties elected to submit themselves'.

"The same author concludes his discussion of the particular topic (4 Int. Law, sec. DCLIV., pp. 470-471), as follows: 'As all the foregoing rules rest upon the presumption that the obligor has voluntarily submitted himself to a particular local law, that presumption may be rebutted either by an express declaration to the contrary, or by the fact that the obligation is illegal by that particular law, though legal by another. The parties cannot be presumed to have contemplated a law which would defeat their engagements'.

"This rule, if universally applicable, which, perhaps it is not, though founded on the maxim, *ut res magis valeat, quam pereat,* would be decisive of the question of the application of the law of Louisiana, by which alone the undertaking of the obligor can be upheld.

"At all events, it is a circumstance, highly persuasive in its character, of the presumed intention of the parties, and entitled to prevail, unless controlled by more express and positive

proofs of a contrary intent." *Pritchard v. Norton,* 106 U. S. 136 and 137.

It was found as a fact that this contract of hiring for not less than a year was made; so it certainly would be most unreasonable to presume that the parties contemplated a law that would defeat their engagements.

Further, coming to the point that

THE LOCAL LAW DOES NOT GOVERN.

We have an express ruling of this court thereon on the contract in *Watts v. Camors,* 115 U. S. 361 and 362, which was a libel on a charter-party entered into between the parties at New Orleans. The libelant claimed that, as the contract was entered into in Louisiana, the law of Louisiana formed part of the contract, and under that law (Civil Code, arts. 2117-2129) the full amount of the stipulated penalty, the estimated amount of freight, was claimed. The defendants claimed that the charter-party was an admiralty contract, to be enforced and construed by the settled principles of admiralty law, wherever the contract should be made; that it is usually made on land, must be made somewhere, but wherever made, does not change or affect the principles of admiralty law which a court of admiralty enforces. And they claimed, under the admiralty and commercial law, that the stipulated penalty in the charter party should not be treated as liquidated damages, but as a mere covenant to pay actual damages. This court said:

"In England and in this country, a court of admiralty, within the scope of its powers, acts upon equitable principles; and when the facts before it, in a matter within its jurisdiction, are such that a court of equity would relieve, and a court of law could not, it is the duty of the court of admiralty to grant relief (Citations). The provisions of the Civil Code of Louisiana, and the decisions of her Supreme Court, tend to show that in the courts of that State, in case of a total breach of the contract by one party, the other might have judgment for the full amount of the penalty stipulated by the parties, although for a partial breach he could only recover his actual damages (Citations). But the law of Louisiana does not govern this question, whether it is treated as a question of construction of the contract of the parties, or as a question of judicial remedy.

"If it is considered as depending upon the intent of the parties as manifested by their written contract, the performance of that contract is to be regulated by the law which they must be presumed to have had in view when they executed it (Citations). Americans and Englishmen entering into a charter-party of an English ship for an ocean voyage, must be presumed to look to the general maritime law of the two countries, and not to the local law of the state in which the contract is signed.

"If it is considered as a question of the remedy and relief to be judicially administered, the equity and admiralty jurisdiction of the courts of the United States under the national Constitution and laws, is uniform throughout the Union, and cannot be limited in its extent, or controlled in its exercise, by the laws of the several States" (Citations).

Watts v. Camors, 115 U. S. 361 and 362.

The ruling in *Watts v. Camors* has never been reversed or modified; but is reinforced by *Workman v. Mayor, etc.,* 179 U. S. 560, et seq., as follows:

> "The decisions of this court overthrow the assumption that the local law or decisions of a State can deprive of all rights to relief, in a case where redress is afforded by the maritime law, and is sought to be availed of in a cause of action maritime in its nature and depending in a court of admiralty of the United States. * * * In Liverpool & G. W. Steam. Co. v. Phoenix Ins. Co., 129 U. S. 443, a maritime contract executed in New York was held to be an American contract, and the local law of New York was declared not to govern in its construction. * * * In the Max Morris case, 137 U. S. 14, the question for decision was, whether, in a court of admiralty, in a case where recovery was sought for personal injuries to the libelant arising from his negligence, concurring with that of the vessel 'any damages can be awarded or whether the libels must be dismissed, according to the rule in common law cases'. It was held that 'the mere fact of the negligence of the libelant as partly occasioning the injuries to him, when they also occurred through the negligence of the officers of the vessel, does not debar him entirely from a recovery.' "

The court there further says (p. 563) it is

> *"the duty of the admiralty court to grant relief* in accordance with the principles of the maritime law" (court's italics).

There is, also, the additional familiar rule that although there is generally under the common law and the statutory law no contribution among joint tort-feasors

> "The right to contribution belongs to the substantive law of the admiralty. It is not a mere incident of a form of procedure" *(Lehigh Val. Ry. v. Cornell S. Boat Co.,* 218 U. S. 270).

We respectfully submit that our contention is thoroughly in harmony with both the majority opinion and the dissenting opinions of Justices Pitney, Brandeis and Clarke, and of Justice Holmes, in *So. Pac. Co. v. Jensen,* supra.

Bearing in mind that the libelant elected to go into the admiralty court, we think this harmony appears from the following quotations:

> " 'That we have a maritime law of our own, operative throughout the United States, cannot be doubted. The general system of maritime law which was familiar to the lawyers and statesmen of the country when the Constitution was adopted was most certainly intended and referred to when it was declared in that instrument that the judicial power of the United States shall extend 'to all cases of admiralty and maritime jurisdiction'. But by what criterion are we to ascertain the precise limits of the law thus adopted? *The Constitution does not define it * * * Nor does the Constitution attempt to draw the boundary line between maritime law and local law; nor does it lay down any criterion for ascertaining that boundary.* It assumes that the meaning of the phrase 'admiralty and maritime jurisdiction' is well understood. It treats this matter as it does the cognate ones of common law and equity, when it speaks of 'cases in law and equity', or of 'suits at common law', *without defining those terms, assuming them to be known and understood.'*

> "In this language there is the clearest recognition that the Constitution, in establishing and distributing the judicial power, did not intend to define substantive law, or to make the rules of decision in one jurisdiction binding proprio vigore in tribunals exercising another jurisdiction. The courts of common law were to administer justice according to the common law * * * and the courts of admiralty and maritime jurisdiction according to the maritime law" (the Justice's italics). *So. Pac. Co. v. Jensen*, 244 U. S. 241.

> "This court has recognized that in some cases different principles of liability would be applied as the suit should happen to be brought in a common law or admiralty court." *Ib.* 222.

What this court said in *The Hamilton*, 207 U. S. 398, 405, has no application here. What was decided in *The Hamilton*, as we understand it, was that where a right has not been given by the Congress or by the general maritime law, a state may create that right, which, in a proper case, will be enforced in the admiralty, because of the maritime nature of locality or subject matter. But this court has always held that where the Congress or the maritime law gave a right, that right could not be affected by state legislation.

THIS CONTRACT WAS PARTLY PERFORMED.

Courts will not allow themselves to be used for the purpose of conferring benefits upon litigants who plead the illegality of a contract into which

they have entered, when, as here, there has been a part performance of the contract and when the relative positions of the contracting parties have been changed by reason of the contract and its part performance; and certainly a court of admiralty, which acts on enlarged principles of equity, will not be tolerant of the plea here made by petitioner.

CONCLUSION.

This is a contract that could have been lawfully made by Astor with one of his skippers in Astoria when Oregon was a territory. In the '30s, the owner of the vessel on which Dana sailed might, at what is now Santa Barbara or San Pedro, California, have taken Dana from before the mast and sent him as master for more than twelve months on a hide-collecting expedition; and, of course, while the world would have been the poorer for a loss of a part of "Two Years Before the Mast", the admiralty would have upheld the contract, had it been breached.

All contracts for service between a seafarer and his employer, made in the different states of the Union, are national or international contracts, essentially. They may be performed in any part of the world, and an admiralty court of this country enforces them according to the maritime law as therein administered. This is a familiar principle in the federal courts. As long ago as 1832 Circuit

Justice Baldwin said, in *Bains v. The James and Catherine,* Baldwin 544, Fed. Cas. No. 756, pages 421 and 422:

> "Though a contract for seamen's wages is made on land, and is cognizable by courts of common law, yet they (courts of admiralty) must adjudicate upon it by the rules and principles of the maritime law. * * * The rights to be ascertained are not legal, as contradistinguished from cases in equity and admiralty in the third article, and the remedy by libel in the admiralty is not the suit at common law, but that peculiar proceeding, by the mixture of public, maritime and equity law, in the same suit, which, according to not only the opinion of the supreme court, but the correct legal construction of the seventh amendment to the constitution, is not forbidden by its provisions. So it was considered by the first congress which assembled after the adoption of the constitution, in the session succeeding that in which the same body recommended the amendments to the constitution. In the sixth section of the act of 1790 (1 Stat. 133) for the regulation of seamen in the merchant service, they have a right to proceed in the district court for their wages, 'and the suit shall be proceeded on in the said court, and final judgment be given, according to the course of admiralty courts in such cases used'; provided that nothing shall prevent any seaman or mariner from having or maintaining his action at common law, &c. 1 Story, 105 (1 Stat. 133, Sec. 6). In the previous sections of this law, there are various other provisions relative to seamen, which make the contract of service a statutory contract, peculiarly appropriate to

> admiralty and maritime jurisdiction, as regulations of commerce and navigation, and the service is in its nature maritime."

And so as to the master, there are many provisions in the Revised Statutes, which make his contract of service a statutory contract, peculiarly appropriate to admiralty and maritime jurisdiction, as regulations of commerce and navigation (see, generally, U. S. Rev. Stats., under Titles "Seamen" and "Officers of Merchant Vessels", and, also, Secs. 4281, 4290, 4291, 4292, 4465, 4597).

Had this contract been made in New York under a like statute, instead of San Francisco, for a like service in Alaskan waters, we think it most probable that the question here raised by petitioner would never have suggested itself.

A California-owned ship, bound from New York to Manila, via New Orleans, and thence on a long trading voyage, might find it necessary to hire a new master both at New Orleans and Manila. According to petitioner's contention, the contracts might be subject to three or four differing laws: according to our contention, there is one law, uniform throughout, and that is the maritime law.

So, there is here no attempted invasion of the rights of the states. On the contrary, petitioner asks that an immemorial right under the maritime law be taken away from libelant by an act of a state legislature.

It is respectfully submitted that the order of the Circuit Court of Appeals affirming the decree of the District Court should be affirmed.

Dated, San Francisco,
March 16, 1918.

CHARLES J. HEGGERTY,
Proctor for Respondent.

F. R. WALL,
Of Counsel.

UNION FISH COMPANY *v.* ERICKSON.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

No. 76. Submitted November 22, 1918.—Decided January 7, 1919.

By a contract made orally in California, respondent was engaged to go to Alaska and there for one year to serve as master of petitioner's vessel, mainly upon the sea. The respondent libeled the vessel in the District Court in California for breach of the contract. *Held*, that the contract was maritime, and that the California statute of frauds requiring a writing for agreements not to be performed within a year was therefore inapplicable in defense. P. 312.

235 Fed. Rep. 385, affirmed.

THE case is stated in the opinion.

Mr. G. S. Arnold and *Mr. William Denman* for petitioner:

The California statute, Civil Code, § 1624, made the contract invalid; it did not affect merely procedure, like the corresponding portion of 29 Charles II, c. 3, par. 4. The contract, therefore, was everywhere unenforceable, unless a State is powerless to make any maritime contract, though entered into within her limits, invalid. *Leroux* v. *Brown*, 12 C. B. 801; *David Lupton's Sons Co.* v. *Automobile Club*, 225 U. S. 489; *Buhl* v. *Stephens*, 84 Fed. Rep. 922; *Allens* v. *Schuchardt*, Fed. Cas. No. 236; affd. 1 Wall. 359; *Scudder* v. *Union National Bank*, 91 U. S. 406, 413; Minor, Conflict of Laws, §§ 173, 210.

The decision in *Workman* v. *New York City*, 179 U. S. 552, (*cf. s. c.*, 63 Fed. Rep. 298; 67 Fed. Rep. 347,) was not revolutionary. It merely applied well-settled principles, holding that in admiralty, as in equity, the federal courts will not be bound by decisions of state courts.

It must primarily be carried in mind that that action involved a tort and not a contract, and that the state law overridden was simply the common-law principles laid down in the state courts. All the decisions relied on (save *Liverpool & Great Western Steam Co.* v. *Phenix Insurance Co.*, 129 U. S. 397, 443,) were cases of procedure or jurisdiction, not passing upon the validity of any contract enforced in admiralty but concerned only with the powers of the States to regulate the admiralty courts. Naturally the States have no such power or the federal jurisdiction in admiralty would be carried on subject to the approval of the States. Admittedly, no state statute can regulate the jurisdiction or practice of the United States courts in equity, *Payne* v. *Hook*, 7 Wall. 425, 430; or in admiralty, *The Lottawanna*, 21 Wall. 558. The federal courts in admiralty, (as in equity,) are not governed by the state statutes of limitation. *The Key City*, 14 Wall. 653, 660; *Sullivan* v. *Ellis*, 219 Fed. Rep. 694, 698. A State cannot affect the application of the Limited Liability Act in admiralty. *Butler* v. *Boston & Savannah S. S. Co.*, 130 U. S. 527, 557. Contributory negligence does not wholly bar recovery in admiralty. *The Max Morris*, 137 U. S. 1. And the admiralty court will determine the priority of maritime liens upon maritime principles. *The J. E. Rumbell*, 148 U. S. 1. (As pointed out in *The Lottawanna*, the constitutionality of the Limited Liability Act was sustained not under the admiralty clause but under the commerce clause. *Lord* v. *Steamship Co.*, 102 U. S. 541, 545. As a valid act under the commerce clause, no state legislation could limit its operation. This is equally true of any valid federal act which regulates commerce, such as the Federal Employers' Liability Act of 1910. *Seaboard Air Line Ry. Co.* v. *Horton*, 233 U. S. 492, 501; *Moss* v. *Gulf Compress Co.*, 202 Fed. Rep. 657, 661.)

The rule that the federal courts are not bound by decisions of state courts upon questions of general juris-

prudence or general commercial law has always been recognized. As stated in *Liverpool & Great Western Steam Co.* v. *Phenix Insurance Co.*, 129 U. S. 397, 443, this principle applies only to state court decisions and does not apply to statutes. But if a State legislates regarding a matter of general commercial law, the federal courts necessarily are bound by the statute enacted. *Smith* v. *Nelson Land & Cattle Co.*, 212 Fed. Rep. 56, 59.

The case of *Southern Pacific Co.* v. *Jensen*, 244 U. S. 205, is not inconsistent with the power of the State to regulate, in the absence of legislation by Congress, maritime contracts, so far at least as to prescribe the formal requirements necessary to the validity of such contracts. The reasoning of both the majority and dissenting opinions confirms this power. That the admiralty courts are bound to respect state statutes of the character here involved had been clearly enunciated some time before in *The Hamilton*, 207 U. S. 398, 405. See also *The Harrisburg*, 119 U. S. 199; *The Lottawanna*, 21 Wall. 558.

Under the similar power expressed in the interstate commerce clause, the federal courts have always held that where state statutes are local in their nature and Congress has not acted, the statutes are valid and will be enforced in the federal courts. *Baltimore & Ohio R. R. Co.* v. *Baugh*, 149 U. S. 368. But to sustain the present decision, the conclusion must be reached that the power of Congress is *exclusive*, and that all state statutes regulating maritime contracts are void in admiralty.

If the California statute, prescribing the formalities necessary to the validity of a contract executed within her borders, will not be enforced in admiralty, it follows that the State is without power effectually to legislate with regard to maritime contracts at all, since the statutory regulation of maritime contracts necessarily involves the

invalidity of contracts not executed in conformity with the statute. To take away the power of a State to regulate maritime contracts seems a clear denial of the principle stated by the Supreme Court in enforcing in admiralty a state pilotage statute. *Ex parte McNeil*, 13 Wall. 236, 243.

As has been pointed out the courts have gone no further in making clear the inviolability of admiralty than they have of federal equity jurisdiction. Yet courts of equity constantly enforce state statutes of frauds. See such cases as *Kennedy* v. *Bates*, 142 Fed. Rep. 51; *Horton* v. *Stegmeyer*, 175 Fed. Rep. 756; *Ducie* v. *Ford*, 138 U. S. 587. If the California statute, prescribing general rules for all contracts, and applying only incidentally to maritime contracts, executed within her borders, infringes upon the judicial section of the Constitution when it is applied to maritime affairs, then so much the more must state statutes directly affecting maritime matters—marine insurance contracts, materialmen's liens, pilotage and many other subjects—infringe upon federal powers.

Mr. Charles J. Heggerty for respondent. *Mr. F. R. Wall* was also on the brief.

Mr. Justice Day delivered the opinion of the court.

Erickson filed a libel in admiralty in the District Court of the United States for the Northern District of California, alleging that by an oral contract with the petitioner, owner of the vessel "Martha," he engaged to proceed to Pirate Cove, Alaska, and after arrival there to serve for a year as master of the vessel, and perform certain duties in connection therewith for an agreed compensation. The libel averred that he proceeded to Pirate Cove, and performed his duties under the contract until he was wrongfully discharged by the respondent. Libelant sought to

recover damages for breach of contract. An answer was filed denying the alleged contract, and averring that libelant was discharged because of his wrongful conduct.

A decree was rendered in favor of libelant in the District Court; upon appeal that decree was affirmed by the Circuit Court of Appeals. 235 Fed. Rep. 385.

The question presented and argued here concerns the application of the California Statute of Frauds, which it is alleged rendered the contract void because not to be performed within one year from the making thereof. The Civil Code of California provides: Section 1624. "The following contracts are invalid, unless the same, or some note or memorandum thereof, is in writing and subscribed by the party to be charged, or by his agent:

"1. An agreement that by its terms is not to be performed within a year from the making thereof."

The contract of the master was of a maritime character. This does not seem to be controverted by the petitioner. (See *The Boston*, 3 Fed. Cas. 921, Cas. No. 1669; *The William H. Hoag*, 168 U. S. 443.) We have, then, a maritime contract for services to be performed principally upon the sea, and the question is can such engagement be nullified by the local laws of a State, where the contract happens to be entered into, so as to prevent its enforcement in an admiralty court of the United States?

The Constitution (Article III, § 2) extends the judicial power of the United States to all cases of admiralty and maritime jurisdiction. Admiralty jurisdiction under the Federal Constitution "embraces," says Mr. Justice Story in his treatise on the Constitution, "two great classes of cases,—one dependent upon locality, and the other upon the nature of the contract." In the latter class are embraced "contracts, claims, and services purely maritime, and touching rights and duties appertaining to commerce and navigation." Story on the Constitution, 4th ed., § 1666.

This court has had occasion to consider the nature and extent of admiralty jurisdiction as it was intended to be conferred by the Constitution. In *The Lottawanna*, 21 Wall. 558, the subject was much considered, and Mr. Justice Bradley, speaking for the court, said:

"One thing, however, is unquestionable; the Constitution must have referred to a system of law coextensive with, and operating uniformly in, the whole country. It certainly could not have been the intention to place the rules and limits of maritime law under the disposal and regulation of the several States."

This principle was reiterated in *Workman* v. *New York City*, 179 U. S. 552. In that case it was declared that neither local law nor decisions could deprive of redress where a cause of action, maritime in its nature, was prosecuted in a court of admiralty of the United States. (179 U. S. 560.)

In the recent case of *Southern Pacific Co.* v. *Jensen*, 244 U. S. 205, the subject was again considered and the cases in this court reviewed, and state legislation was declared invalid "if it . . . works material prejudice to the characteristic features of the general maritime law or interferes with the proper harmony and uniformity of that law in its international and interstate relations." (244 U. S. 216.)

In entering into this contract the parties contemplated no services in California. They were making an engagement for the services of the master of the vessel, the duties to be performed in the waters of Alaska, mainly upon the sea. The maritime law controlled in this respect, and was not subject to limitation because the particular engagement happened to be made in California. The parties must be presumed to have had in contemplation the system of maritime law under which it was made. *Watts* v. *Camors*, 115 U. S. 353, 362.

In different countries the appointment of masters of

vessels has been the subject of maritime law which has directed the conduct of "those who pursue commerce and put to sea." Their duties and qualifications have been the subject of regulation by the recognized principles of admiralty law. Benedict's Admiralty, 4th ed., § 146. They are regulated by statutes enacted under federal authority. See U. S. Comp. Stats. of 1916, vol. 12, Index "Masters of Vessels."

If one State may declare such contracts void for one reason, another may do likewise for another. Thus the local law of a State may deprive one of relief in a case brought in a court of admiralty of the United States upon a maritime contract, and the uniformity of rules governing such contracts may be destroyed by perhaps conflicting rules of the States.

We think the Circuit Court of Appeals correctly held that this contract was maritime in its nature and an action in admiralty thereon for its breach could not be defeated by the statute of California relied upon by the petitioner.

Affirmed.